

WHEN CAN GOVERNMENT GET INVOLVED IN CASES OF PATENTS WHICH CAN BE BENEFICIAL FOR THEM

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Abstract:

Intellectual Property Rights are legal rights that provide creators protection for original works, inventions, or the appearance of products, artistic works, scientific developments, and so on. The types of Intellectual Property Rights (IP): Patents, Trademarks, Copyrights, Designs, Geographical Indications, and Trade secrets. The Patent Act of 1970 primarily governs Law of Patent.

Introduction to the topic:

What is a Patent?

“Patent” refers to a prerogative over an invention. Not all inventions are patentable nor it is essential to protect every invention through patent. An invention is protected through other forms of Intellectual Property Rights. Patent Law encourages research, technology, and industrial progress. Exclusive privilege to own, use, or sell the method or the patented product for a limited period. The exclusivity right of a patent can be exercised by the owner for a period of 20 years after which it is open to exploitation by others. A Patent confers the right to manufacture, use, and offers for sale, sell or import the invention for the prescribed period. The patent is granted at the Patent Office after some payment of the price.¹

History of Patent Act

¹ This was stated by the Supreme Court in the case of Bishwanath Prasad RadheyShyam v. Hindustan Metal Industries.

The journey of the Patent Act started in the year 1856, which was based on British Patent Law. Many Patent acts and amendment acts were made until 1999 when the Patents Amendments Act was passed.

Patents Rules

Under section 159 of the Patents Act, 1970 the Central Government is empowered to make rules for implementing the Act and regulating patent administration. Accordingly, the Patents Rules, 1972 were notified and brought into force w.e.f. 20 April 1972. These Rules were amended from time to time until 20 May 2003 when new Patents Rules, 2003 were brought into force by replacing the 1972 rules. These rules were further amended by the Patents (Amendment) Rules, 2005 and therefore the Patents (Amendment) Rules, 2006. The last amendments are made effective from 5th May 2006.

The Government keeps updating the Patent Rules from time to time. The amendments are added to the rules making it updated. Few rules are mentioned in the Patent Rules, which benefit the Government in the cases of Patent.

Referring to Rule 6, Rule 7, and Rule 24 of the Patent Rules

Rule 6 of the Patent Rules

1. The Application is required to be filed and submit to the patent office, or the controller, or any authorized person under the Act or the rules, the same document is to be sent via a letter addressed to the controller at the appropriate office through post or registered post or speed post or by electronic transmission duly authenticated. If it is sent by post or registered mail or by electronic transmission duly authenticated, it shall be deemed to possess been filed and mailed the same during the ordinary course of post or speed post or by electronic transmission as the case may be.

In the Patents Rules, 2003, in rule 6, for sub-rule (1A), the following sub-rule shall be, a patent agent shall file, make or give all documents only by electronic transmission duly authenticated.

Provided that any document, if asked to be submitted in original, shall be submitted within a period of fifteen days, failing which such documents shall be deemed not to have been filed.”²

Rule 7 of the Patent Rules

Rule 7 (3) of the act says that the application processed by a natural person is fully or partly transferred to a person other than a natural person, the difference between the fees charged from a natural person and the fees chargeable from the person other than a natural person in the same matter shall be paid by the new applicant.

Whereas, Rule 7 (3A) says about the application processed by a small entity fully or partly transferred to a person other than a natural person, except a small entity, the difference if any in the scale of fees shall be chargeable from the person other than a natural person in the small matter shall be paid by the new applicant.

The Amendment in Rule 7 (3B) was added in the amendment made 17 September 2019, an application processed by a start-up, fully or partly transferred to any other person other than a natural person or a start-up, the difference in any fees charged shall be paid by the new applicant.

Explanation: Where the start-up ceases to be a start-up after having applied for patent due to a lapse of more than five years from the date of its incorporation or registration or the turnover subsequently crosses the financial threshold limit as defined, no such difference in the scale of fees shall be payable.

Rule 24 of the Patent Rules - Publication and Examination of Applications.

Rule 24(B) States the period for submission of application on various grounds.

Rule 24(C) states an applicant may file a request for expedited examination in Form 18A along with the amount as specified in the first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24B on any of the subsequent grounds, namely:

- the competent International Searching Authority; or
- that the applicant is a start-up; or
- a small entity; or

²<http://www.ipindia.nic.in/>

- a natural person or in the case of joint applicants, all the applicants are natural persons, then the applicant or at least one of the applicants is a female; or
- Department of the Government; or
- The institution established by a Central, or State Act, which is owned or controlled by the Government; or
- Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013); or
- Institution wholly or substantially financed by the Government;³

Conclusion:

India has always acknowledged the importance of a robust patent legal system for the development of industry and commerce, which is clear for the amendments done to bring India at par with the modern world. With the promulgation of the product patent regime in India, most of the countries are now looking for business opportunities. There has been a considerable rise in patent filing. Innovators and inventors from all fields of technology are mostly keen on protecting their intellectual property. The government is responsible for the registration of patents. The new application for the patent is always beneficial for the Government they also keep the act updating through the amendments in the Acts from time to time.



³http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/patents_amendment_rules_2019.pdf