

Patent Drafting for Beginners
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Lecture - 06
Technical Advance

Technical advance, when we talk about an invention. The invention has to make a technical advance to the art. Now, this is one of the requirements under the Indian act, an invention should be capable of showing some kind of a technical advancement over the existing knowledge.

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Technical

Definition of TECHNICAL

- 1 a : having special and usually practical knowledge especially of a mechanical or scientific subject • a *technical* consultant
- b : marked by or characteristic of specialization • *technical* language



Now, it is not the entire invention that has to demonstrate this, but a feature of the invention. Now, let us understand what technical means, technically generally the definition of the dictionary meaning means having special or usually practical knowledge, especially of a mechanical or scientific subject.

So, scientific is regarded as technical, you technological means, something that relates to or is characterized by technology.

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Technological

Definition of TECHNOLOGICAL

- 1 : of, relating to, or characterized by **technology**
- 2 : resulting from improvements in **technical** processes that increase productivity of machines and eliminates manual operations or operations done by older machines



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What is Advancement?

Technical Advance means:

- ✓ Change
- ✓ Development
- ✓ Achievement
- ✓ Progress

This advance is in the overall process of invention, innovation and diffusion of technology or processes.



Now, now when we talk about a technical advance, we are talking about an advancement that is technical in nature. Now, it could be a change, it could be a technical development, it could be a technical achievement, or a technical process progress.

Now, this advance is in the overall process of invention, innovation and diffusion of technology or processes. Now, in general we understand technical advance as contributing to an invention, or an innovation, or a diffusion of technology or

processes, but in the context of patent law, a technical advance pertains to an advancement in the existing knowledge.

So, when your invention is compared with the prior art, there is some kind of an advancement that is expected of your invention to show..

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In Patent Parlance, Technical advance

- refers to "*technical advance as compared to the existing knowledge*"
- An Invention is defined as something that comprises a technical advance
- You make an inventive step, when there is a technical advance or economic significance



Now, in patent parlance that is in patent law, a technical advance refers to a technical advance as compared to the existing knowledge now, we will come to the definition soon, but this is a requirement under patent law now, the reason we are describing this in some detail is for you to understand that, in a patent specification when you draft a claim, you have to demonstrate there is a feature in the invention, which shows technical advance as compared to the existing knowledge.

Now, there are certain best practices in doing that because, sometimes a comparison with the prior art can be dangerous because, it would look obvious in hindsight. So, we will look at the safe practices or the best practices to be employed at a later stage. So, an invention is itself defined as something that comprises of a technical advance.

You may make an inventive step, if you make an inventive step then, you have to there has to be either technical advance or economic significance. We will come to the definitions in a moment.

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Invention:

“invention” means a new product or process involving an inventive step and capable of industrial application.



Now, invention is defined to mean a new product or a process involving an inventive step and capable of industrial application. So, it has to be new, it can pertain to a product or a process, the second requirement apart from it being new is that, it should involve an inventive step.

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Inventive Step

“inventive step” means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;



The inventive step in turn is defined as a feature of an invention, that involves technical advance as compared to the existing knowledge, or having economic significance, or

both it could be the technical advance and economic significance, and that makes the invention this and is important here, and that makes the invention not obvious to a person skilled in the art.

The reason why we say? The and here is important is because, the technical advance is one requirement, and economic significance is another requirement, and they can be either or both apart from these two requirements, there is the non-obviousness requirement, in other words an invention should not be obvious to a person skilled in the art.

Now, this part that you see used to be the part of what contained in the traditional definition? That is before the Indian law was amended in 2005, that makes the invention not obvious to a person skilled in the art used to be the traditional definition. This two features, that is technical advancement and economic significance were added later on.

Now, that has some implications in how you now would draft your patent, but nevertheless inventive step should demonstrate in one way or the other a technical advancement, if it cannot show that there is some kind of an economic significance. Now, the most important feature in this in this definition is the word feature itself. Because, what you would be doing? When you demonstrate inventive step is to show that, a feature of the invention has technical advance or economic significance and is not obvious to a person skilled in the art.

So, it is not the entire invention, that has to be inventive it is a feature of an invention. Now, this becomes very important in drafting because, if there is an inventive feature, the way you draft that inventive feature is going to be important because, you are going to claim protection for that inventive feature and for not for the other non-inventive features, in your in your patent.

So, identifying the inventive feature will be critical for you to understand where, that inventive feature will figure in the scheme of things, when you draft your claim.

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Technical advancement of what?

- Feature of an invention
- Feature should involve an inventive step
- Feature should be claimed as an invention
- The claim of the patent should contain the feature



Now, technical advancement of what? Now, it has to be a feature of an invention, that feature should involve an inventive step, that feature should be claimed in an invention as I said, it is a principle in drafting that the feature that involves an inventive step should be claimed, and the claim of the patent should contain that feature.

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Things to Note:

- Technical advance is demonstrated by showing progress
- Inventive step should related to a feature of invention



Now, certain things to note here, are technical advance is demonstrated by showing progress, and inventive step should relate to a feature of an invention.