


**Intellectual Property**  
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**Lecture – 24**  
**Who Can Apply for a Patent**

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## Who can apply for patents?

- True and first inventor of the invention
  - Natural person
  - Other persons can be assignee or joint applicant
- Assignee of true and first invention
  - Applicant is in possession of the invention
  - No lawful ground of objection to the grant of the patent to the applicant

Who can apply for patents? As we mentioned, the inventor is the person who creates the invention and he is the person who is entitled to apply for a patent. The act uses the word true and first inventor of the invention. Now, this can be natural person, either an individual or a group of people, or it could also be a team of people who together come and create, but, working in different locations. So, we are looking at a true and first inventor could be a team of people working from different locations and they are all shown together as the inventor. So, their names figure in filing in a patent application as the inventors. Now, a true and first inventor can apply for a patent; a patent can also be applied by an assignee or of the true and first inventor. Now, the true and first inventor may invent the invention. He may assign it to another person.

Now, you will understand assignee, as a person who takes the invention and files it and prosecutes it at the patent office. In most cases, employees who work for an organization, say a company or a research organization, do not own the invention. The terms of their

employment will say that the invention shall be owned by the organization which employees them.


So, when an employee comes with an invention, the employee's name figures as the inventor's name, whereas, the applicant will be the company itself; company or the organization to where the employee works. So, you can see two different possessions, which people employee with regard to patents. One, you are shown as an inventor, which could be the employee and there is a status of as the applicant itself who, the person who owns the patent, who files the patent, takes care of all the expenses for the patent to get granted, and who eventually renews the patent and keeps it alive.

Now, this is the applicant. In a case where the inventor himself or herself is the applicant, then, there is no assignment involved because, the inventor also became the applicant. In cases where the inventor is not the applicant, there is a need for assignment. Now, assignment is the way by which you can legally pass on an invention from one person to another; the ownership of an invention is passed on to another entity or another person. Employees normally, their terms of employment will say, will, would state that any invention that they come up with during the course of employment which involves a part of their work, will be assigned to the employer.

So, an assignment can be by way of an employment contract or they can be a specific document of assignment. So, this in law be referred to as the proof of right. If you need to be an applicant, you need to demonstrate by what proof you are claiming the status of an applicant. If you are inventor, there is no need for a proof of right, because, the inventor itself came up with the invention. If you are not the inventor, then, you require a proof of right. The proof of right can be an assignment deed, wherein, the inventor assigns the invention to the assignee.

So, an applicant can be the true or first inventor, or it can be assignee, or it could also be a legal representative of the true or true and first inventor or the assignee. So, first you have the true and first inventor; can apply for a patent. In case the true and first inventor is not the applicant, then the person to whom the invention is assigned becomes the applicant.

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## Who can apply for patents?

- Legal representative of any deceased person
  - Represents the estate of the deceased person
- Patent Agent - Authorisation
- Mention of Inventor
  - Person making application-possession of invention

And then you have the third category, the legal representative of any deceased person; any deceased person, who was the true and first inventor or who was an assignee. Now, these three categories only say who can apply; in what capacity a person can apply? For filing and prosecuting patents, you need a specialist called the patent agent. The patent agent are people who have a background degree in science and technology and who have cleared the patent agent examination conducted by the Central Government. Now, the patent agent examination, tests proficiency in patent law, and it also ensures that the people who clear the exam can draft and file patents before the patent office.

So, to draft and file patents and to answer objections raised by the patent office with regard to an applicant, application, you need to be a patent agent; a registered patent agent. There are patent office keeps a role of the patent agent; people who have cleared the exam and who renew their registration; the role is kept at by the patent office. So, it is not that an inventor cannot directly deal with the patent office. As an applicant, you can directly deal with the patent office. But, the preferred route is through a patent agent. To engage a patent agent, you will have to file an authorization; there is a particular form by which you can authorize a patent agent, to represent you. Just how, if you need to file a case before a court of law, you need to engage an advocate, you do that by filing a vakalat.

Similarly, here you do that by, you could either give her a, give a power of attorney or you have Form 26, which you use to engage a patent agent. So, the patent agent will be the point

of contact between the inventor or the applicant and the patent office. Now, you also have a provision, where you need to mention the inventor, regardless of who owns the invention. So, this provision brings out the distinction between the capacity of an inventor and the capacity of an applicant.

As an inventor, you have a right to be denoted; you have a right to be mentioned as an inventor, regardless of whether you own the invention. Say, an employee in an organization comes out with an invention. So, but the invention is assigned to the company, the employer. And the employer becomes the applicant and files the patent and gets a grant. Now, every commercial gain that comes out of the invention is enjoyed by the employer.

The employee is not given a share, because the employee was already paid for the work that the employee had done. The terms of employment has already covered the remuneration for coming up this invention. Now, regardless of the gains that an employer will make out of this invention, and the fact that every benefit that flows out of the invention will solely be enjoyed by the employer, the employer will still have to show the employee as the inventor. So, the right to be mentioned as an inventor is a right that the person who came up with the invention enjoys. So, nobody can disentitle a person from a person's right to be mentioned as an inventor. But, just because you have a right to be mentioned as an inventor, it does not mean that you own the invention.

So, wherever an inventor assigns the right in an invention, wherever an inventor assigns the right in an invention, the inventor will still have the right to be mentioned as the inventor. So, this is similar to the moral right of an author. The author may have assigned the book, the work of copyright to a publisher and the publisher may own the book, have the right to make multiple copies of it, and the copyright would also be in the name of the publisher, if there is an assignment. But, regardless of the ownership, the author has a right to be mentioned as the author of the work; so, this is called the moral right of the author. So, similarly, with regard to inventions, you have a provision where the inventor can mention himself or herself as the inventor.