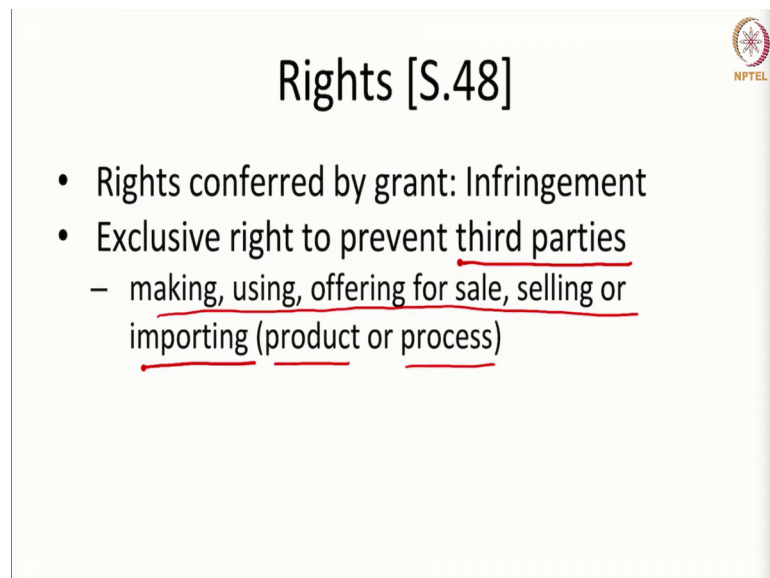



**Intellectual Property**  
**Prof. Feroz Ali**  
**Department of Humanities and Social Sciences**  
**Indian Institute of Technology, Madras**

**Lecture – 30**  
**Rights of Patentee**

Rights of Patentee.

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**Rights [S.48]**

- Rights conferred by grant: Infringement
- Exclusive right to prevent third parties
  - making, using, offering for sale, selling or importing (product or process)

When a patent is granted, there are certain rights that accrue on the holder of the patent, the patentee. The rights conferred have to be understood in the context of an infringement, because what patent essentially offers to a person is the fact that the person can now stop others from using his invention. There is an invention which has been patented. And any intrusion into the invention is regarded as an infringement.

So, the exclusive right is a right to prevent third parties. Now, third parties can be prevented from making, using, offering for sale, selling or importing. Now, the patent right can manifest either in a product what we call a product patent or in a process a method or a way of preparing or manufacturing something. So, a product patent will have the same term as a process patent, but a product patent is the more comprehensive right than a process patent. A process patent for instance if there is a process of making liquid solution, comprising of steps a, b and c. The liquid solution is protected only if it is manufactured or made using that method where step a is followed by step b, and step b

is followed by step c. Assume that a competitor now comes up with a process of making the liquid solution, same liquid solution in just two steps. He uses d and e to come up with the liquid solution.


Now, this use of two steps in d and e which are much different from a, b and c are regarded in law as non infringing steps; d and e are not covered by the patent which comprises of three steps a, b and c. So, the d and e process patent is regarded as a non infringing process, because the process that is protected by the patent comprises of three different steps a, b and c though the end product is the same. So, in a process patent, the protection is limited to what has been claimed as a method of protection.

So, a process patent will allow other processes to also exist if the processes are non infringing, if the processes do not intrude into the right that has been granted, whereas a product patent is a more comprehensive protection.

Let us again come to the example of a liquid solution. Say there is a product patent over the liquid solution which says the liquid solution itself is claimed. When the liquid solution itself is claimed, any process of making it say by using steps a, b and c, or say by using steps d and e, or any other combination, we will also be covered because now the product itself is covered. Now, this distinction is critical for us because India did not offer product protection for pharmaceutical products before 2005, because we did not offer patent protection for pharmaceutical products.

They were only process patents in India. And because process patents allowed you to come up with alternative non-infringing processes, they were enough players in the market and this has been attributed as one of the reasons for the growth of the Indian generic pharmaceutical industry. From 1970 till 2005 Indian law did not grant product protection for pharmaceutical products. And, because of that it allowed room for generic pharmaceutical companies to come up with different versions and different alternatives which we are non-infringing. Now, some scholars regard this as policy move which led to the growth of there were other things that also contributed to the growth of the Indian pharmaceutical industry, but this is seen as one of the important contributors.

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## Assignments

- Assignment, share, mortgage, license [S.68]
  - valid only when in writing
  - Reduced to form of document
  - Contains terms and conditions governing their rights and obligations
- Assignment needs to be registered-Controller [S.69, F.16]

Assignments: when a patent is granted a patent can be assigned to another person. Now, assignments can be you can assign the patent where and you can sell the patent to another entity or you can assign a share in the patent or you can mortgage the patent or you can license the patent. We have a provision which covers all kinds of assignments. Now, an assignment where you either give the entire patent by way of a sale or you only share an interest in the pattern say like license it has to be in writing law requires assignments to be in writing. And it should be reduced in the form of a document.

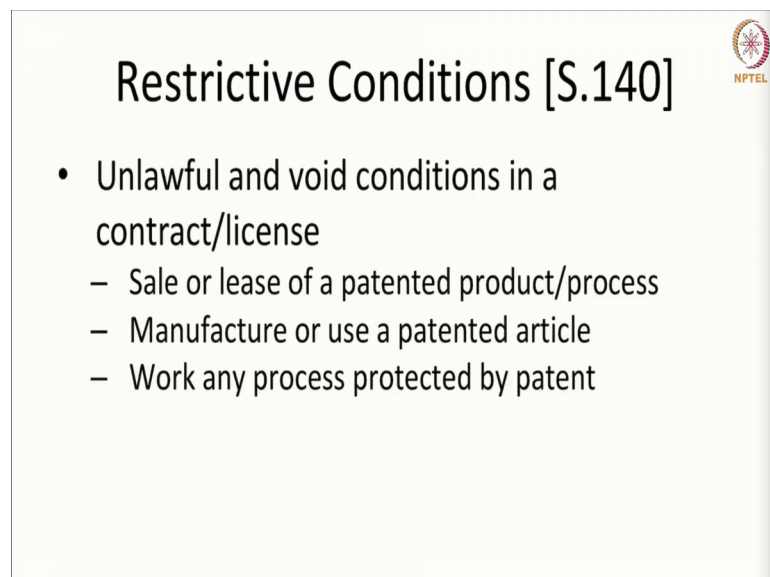
Now, the terms and conditions should be clearly stipulated, and also the rights and obligations of the parties have to be mentioned. Now, the assignment deed the deed that captures the assignment as also there is a requirement that it needs to be registered. And the controller has to be informed about the assignment. Now, these are the provisions and govern, F.16 is the form that is used for assignment form 16.

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Patent licensing: like any other right, a patent can be licensed, it can be licensed to multiple people. Or, it can be licensed solely to one person. Sole licenses are usually called exclusive licenses an exclusive licensee becomes a person who can exercise the rights of the owner. He the exclusive licensee will have rights very close to that of an owner.

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Now, there are some restrictive covenants or restrictive conditions mentioned in the act which should not be a part of the license. Now, there are certain unlawful and void conditions which contract or a license covering a patent should avoid.