


Intellectual Property
Prof. Feroz Ali
Department of Higher Education
Indian Institute of Technology, Madras

Lecture – 16
Types of Patent Application

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Types of Applications



- Ordinary application: S.7
- Convention application: S.135
- PCT international application under PCT


Types of applications; under the Patents Act, you can make an ordinary application. The ordinary application is an application which you would make, before the Indian patent office, expecting a grant of a patent, which will have operation only in India. It is more like a domestic or local application. So, if you file an ordinary application, then you would get a grant, that is enforceable in or within the territory of India. So, this is the default application; it is an ordinary application. By getting an ordinary application, you can only enforce the patent within the boundaries of India.

In India, you can also file, a convention application. A convention application is the second type of application and the provisions are given under the Indian Patents Act. The convention application is, because India is a party to the Paris convention, you can file an application in a foreign country and then you can file a convention application in India, seeking the priority from that foreign application, provided the foreign country is also a signatory to the Paris convention.

So, this is in arrangement, where you can file an application in any country, which is a member of the Paris convention and follow it up with an application in India for the same invention, within a period of 12 months. So, this gives a time period, for following up or covering applications in different jurisdictions for the same invention. So, the second type of application that you can file in India is a convention application, which is nothing, but a follow application filed in India, based on an earlier application that was filed in a convention country. It could be England, it could be Germany, it could be Japan, it could be any other country which is a signatory to the Paris convention.

The third type of application you can file in India is the PCT international application under the Patent Cooperation Treaty. Works very similar to the convention application because, India is now PCT has its PCT office set up in India. India can receive international PCT applications. The cost of filing international PCT application is substantially different; when you compare it to the cost of filing a PCT application, say in the United States or in the European Union.

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Types of Applications

- PCT national phase application under S.7(1A)
- Application for patent of addition under S.54
- Divisional application under S.16

You can also file a PCT in national phase application in India. Now, the PCT international application which you just saw, is an entry point in India, where the PCT international application will now have the potential to go to various countries; wherever you choose and you can choose different countries; the only thing that you will need to do is, you will have to individually prosecute these applications in the respective countries.

So, the PCT international application gives you an entry point into different countries, which are all signatories to the Patent Cooperation Treaty; whereas, the PCT national phase is filed, when you want to enter India through the PCT route. Assume that you have to file an application in the United States, and within 12 months you file a PCT application choosing United States patent office as the PCT office.

So, your international application under the PCT begins in the United States. Now within the time period allowed, you can enter India. How do you enter India? Using the PCT international application citing the priority in United States; so, the follow up happens in India through the PCT route. When the follow up happens in India using the PCT route, we call it a PCT national phase application. It is a national phase, or the follow up of a PCT application, where you enter India within 30 months from the date of priority, so that, this national phase application will now become an Indian grant.

So, that is the fourth type of application you can file in India. The fifth type of application is an application for a patent of addition. You already have an invention, granted or filed in India, and now you have made some improvements in modification to an existing invention. You can cover the improvements and modification by the way of a patent of addition. There is no need to file a fresh new application because, it is just a modification or an improvement over an existing invention.

So, the patent of addition, allows you to cover improvements in modifications. The patent of addition will run along with the earlier invention, what we call the main invention, and it will expire along with the main invention; Which goes to tell you that a patent of addition is nothing but, something which runs along with a main invention. Because you came up with improvements and modifications in at a later point in time, law allows you to club them and have them together with the main invention. So, that's the fifth type of application you can file. And the sixth type is a divisional application. A divisional application is normally filed to divide an invention. The law requires that every application should have only one invention.

So, you file an application with more than one invention, then you can voluntarily divide it into the respective in applications, covering each application covering an invention, or you may be directed by the patent controller. The patent office may say that your application has more than one invention; this is called the unity of invention, that you can file only one application per invention. The point, the patent office may point out that you have, your

application has more than one invention and ask you to divide it. So, the process of dividing an application, wherein, you separate the invention, is done by filing a divisional application.