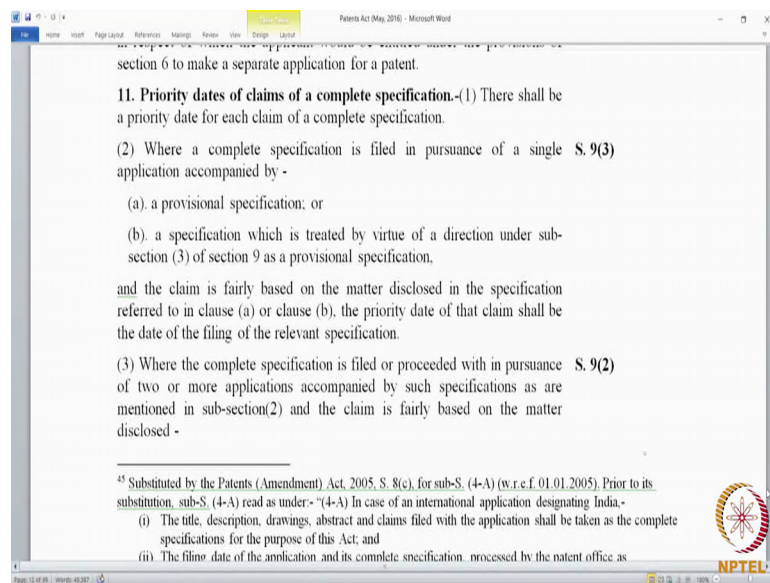


Patent Law for Engineers and Scientists
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Lecture – 25
Patent Prosecution: Patent Application
Priority Dates

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Section 11; Priority dates of claims of a complete specification; Section 11 introduces the concept of priority. Priority is the concept that decides when a patent application was filed with regard to determining novelty. Novelty as we have discussed before is the fact that an invention has to be new and novelty is connected to the concept of anticipation; and invention is regarded as new if it is not anticipated by the prior art. In order to determine anticipation or in order to determine whether an invention is new, we look at the priority date of the invention. So, the priority date is the concept that is tied to the disclosure of the invention, when the invention is disclosed and based on the priority date we are able to determine whether an invention is new.

So, if there is a disclosure before the date of the priority, that disclosure can affect the novelty of the invention. So, the priority date refers to that point in time from which the invention will be regarded as new. As the concept priority date is tied to the claim of a complete specification, they may be a disclosures made in a provisional specification,

they may be a disclosures made in the descriptive part of a complete specification, but priority is only tied to the claim. So, 11 1 begins by a statement that they shall be a priority date for each claim of a complete specification. So, each claim regardless of the number of claims that are there should have an independent priority. Now why is that so? Because we have seen that they could be instances where claims are craft out of various disclosures that are made by different provisional specifications. We have seen instances where provisional specifications could be filed one after the other, and you could follow all the provisional specification with one complete specification provided that complete specification is filed within 12 months from the first provisional specification.

This tells us that if there are multiple disclosures of aspects of the same invention made pursuant to filing different provisional specifications, it is possible to capture all the disclosures together through the filing of one complete specification. Needless to say that complete specification will have multiple claims which were disclosed at different points in time. Now understand this as a case where all the disclosures that were made in the provisional specification was captured in the complete specification, but in different claims. So, if the disclosures were made on a monthly basis and we are refer to this hypothetical instance of provisionals being filed on the first of every month. So, you had a provisional filed on Jan first of particular year, disclosing an aspect of the invention then you had another provisional filed on unrelated aspect on Feb first then on March first and April first you had 4 disclosures.

So, when you follow this with the complete specification say in may, and assumed that the complete specification does not add anything, but just compiles all the disclosures made in the earlier 4 provisional specifications, you are likely to have a minimum of 4 claims. Assuming again that there were 4 different disclosures made which were related to each other. So, you could have a minimum of 4 claims, these 4 claims will have a priority date that goes back to the first disclosure. So, assume that the claim 1 relates to the disclosure made in January first made in the provisional specification file on January first then that claim, claim number 1 will have a priority date that starts from Jan first. Claim number 2 covers a disclosure made by the provisional specification file on February first and claim twos priority date will begin from February first and so on.

So, we understand from this that claims in a complete specification can have different priorities or they could also have same priority. For instance you file a complete

specification there is no history of a provisional specification, what you file for the first time is the complete and at that point all the claims are going to have the same priority because these claims have been disclosed for the first time. So, it is possible for claims to have the same priority all the claims to have the same priority, but as a rule 11.1 tells us that each claim will have a priority date. As a priority date is significant as we mention to determine novelty of an invention. So, anything any disclosure before the priority date pertaining to the invention can affect the novelty, we can say that they could be a case for anticipation of what is disclosed before, and any disclosure that is made above the same invention after that priority date can be a matter of potential infringement.

So, if the disclosure when before your priority date it could affect the novelty of your invention, if the disclosure happens after your priority date you could have the case of infringement against that disclosure or against that person who makes the disclosure of; obviously, after the grant of the patent. 11.2 gives you instances where claims in a complete specification can have different priorities. Now 11.2 the corresponding or the relevant provision is a case which we saw in section 9.3, section 9.3 you will recall is a case where a specification was filed perfecting to be a complete specification, and that could be downgraded as a provisional. We saw an instance where disclosed could be made in a document that is purported to be a complete and the applicant to could request at anytime within 12 months from the date of filing the application to downgrade or to treat the complete as a provisional and then to proceed accordingly.

So, whenever disclosures are made at different points and time, and based on those disclosure claims a file the claims are likely to have different priorities. 11.2 tell us that where a complete specification as file pursuant to a single application accompanied by a complete a accompanied by a provisional specification, or specification which is treated by virtue of a direction under subsection 3 of 9 that is the purported complete as a provisional, and the claim is fairly based on the matter disclosed in the specification referred to enclose a or b, the priority date of the claim shall be the date of filing the relevant specification. Now we had already mentioned fair basis or the phrase fairly based pertains to the fact that a disclosure that is made has to be followed by a claim and if the claim is fairly based on an earlier disclosure, the claim takes that earlier priority. 11.2 gives to instances one an instance where a provisional specifications filed, and we saw from the language of form 2 a provisional specification need not have a claim.

So, provisional specification only has a broad disclosure and it need not have a claim. So, 11 2 tells us 2 instances; the first instance where a provisional is filed and the claim is fairly based on the matter disclosed in that provisional specification is file at a later point in time by way of a complete, then the priority date of that claim shall be the date of filing that relevant specification and by relevant specification they are referring to the provisional. So, if there is a provisional file with the disclosure after say 6 months, you file a complete with a claim and the claim is actually carved out of that disclosure which you made in the provisional specification, then the priority date of the claim will be the date of the disclosure made in the provisional. So, keep this in mind fair basis is all about mapping a disclosure to a claim. So, there is a disclosure made of the inventive concept or the invention and you file a claim at a later point in time.

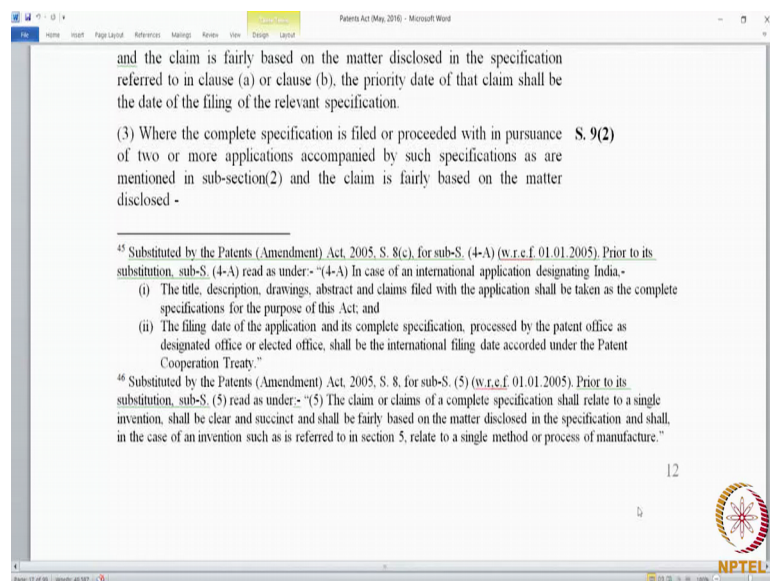
Now, this mapping would normally happen when there is a provisional followed by the complete route as I mentioned sometime back, you could directly file a complete. In that case this mapping need not be there because the complete has claims in it and the completes the claims are supported by the description. So, the description and the claims where disclosed at the same point in time they both have the priority is the same, because the disclosure and the claim happened at the same point. 11 2 talks about when the disclosure and the claims happened are filed or at different points; provisional specification has the disclosure which when it is followed by a claim at a later point in time, the claim will have the priority from the disclosure the word you will find that in 11 2 their own use the word disclosure rather they use the word matter disclosed it pertains to the same.

So, when the disclosure is made for the first time and is followed up by a claim at a later point in time in a complete specification, the complete specification can take the priority of the disclosure and what is the yardstick for this? The yardstick is that the claim should be fairly based on the matter disclosed; it should be fairly based on the disclosure made in the specification. Now the second condition in 11 2 the first condition was where a provisional follows the complete the second condition or second type of claiming priority from an matter disclosed pertains to what we call specification treated as a purported complete I mean it was filed it was purported to be a complete specification, but for whatever reason the applicant felt that it is not complete and the applicant wanted to downgraded or to convert the purported complete into a provisional.

Now, in that case again you are going to have disclosures different from claims; understand the purported complete having something in, at disclosure. Now when you convert that into a provisional you get more time to file a complete obviously, you should have more time because the time will accrue 9 3 tells us that the time will accrue from the date of filing the first specification which is the purported specification. So, you will definitely have more time to file a complete, because now you have regarded the complete that you filed as a provisional. So, when you follow it up with another filing, there will be a case where there I been disclosures made earlier and claims filed later.

So, when this happens, the concept of fire basis can step in. Now you can see whether those claims that were file later could be mapped or fairly based or can be derived from the earlier disclosure. Again in this case we could regard the claims as having priority from the date on which the earlier matter was disclosed. Now section 11 2 talks about 2 instances both instances pertain to a provisional followed by a complete, and in both the instances if the claim in the complete can be mapped or can be fairly based on the matter disclosed earlier it takes the priority. So, priority as I said is tied to the claim priority as a concept is tied to claim every claim needs to have a priority and the priority can shift based on the disclosure made based on the matter disclosed if the matter was disclosed earlier to the filling of the claims then they get the priority from that earlier date.

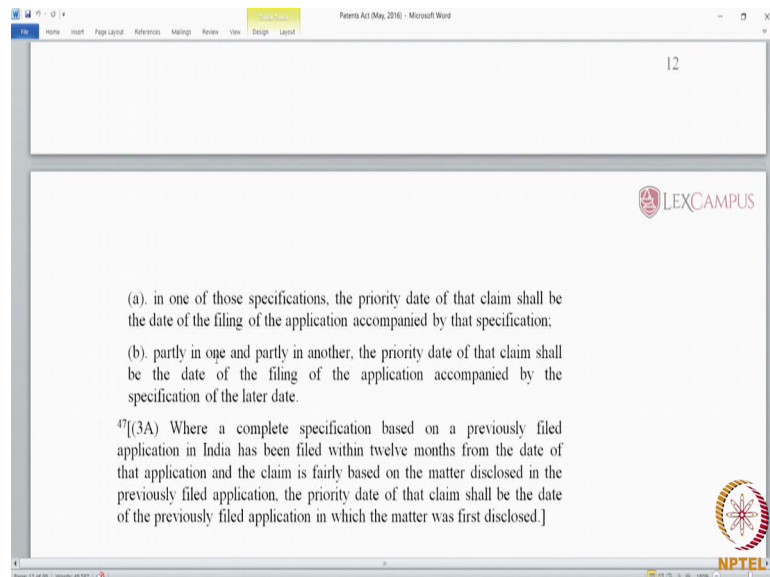
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Eleven 3 gives yet another instance where a complete specification is filed or preceded in pursuance of 2 or more applications accompanied by the specifications as I am mentioned in subsection 2, and the claim is fairly based on the matter disclosed.

Now, the corresponding relevant provision is a similar instance is mentioned in section 9 2. Section 9 2 you will recollect talks about 2 or more applications of a filed which are followed up by one complete you could filed multiple provisionals and followed up by a complete. Now this talks about a similar case where a complete is file pursuant to many one 2 or more provisionals.

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Now, it further states that in one of those applications the priority date of the claim shall be the date of filing the application accompanied by that specification. Partly in one and partly in the other the priority date of the claim shall be the date of filing the application accompanied by the specification in the later date. Now this again is tied to the disclosure; now a tells us that in one of those specification the priority date of the claim shall be the date of filing the application accompanied by that specification, which simply means that if the disclosure is complete the date on which the disclosure was completely done you get the priority date from that.

So, you file a claim in your complete specification and the claim can be mapped to a complete disclosure. Complete disclosure as a whatever is claimed in that particular claim has been completely disclosed in one point and time earlier. Regardless of whether

came in the first provisional law the second or the third it was completely disclosed. So, a tell us if the disclosure is made in one of those specifications, the priority date of the claim shall be the date of filing the application accompanied by that specification. So, it relates to an earlier date and what is the cashier? The cashier is the disclosure should I have been complete it should completely cover what is now being claimed; b is the other side of the coin b says if the disclosure is in part in one and part in the other. So, what does this part mean? The inventive concept or the invention as it is being claimed in one particular claim, the disclosure happened in 2 paths what is now being claimed in one claim the disclosure happened in 2 paths, it came in a provisional specification say a provisional specification file and January First; it came first, and part another part of the invention came in disclosure made in a provisional specification file on February first.

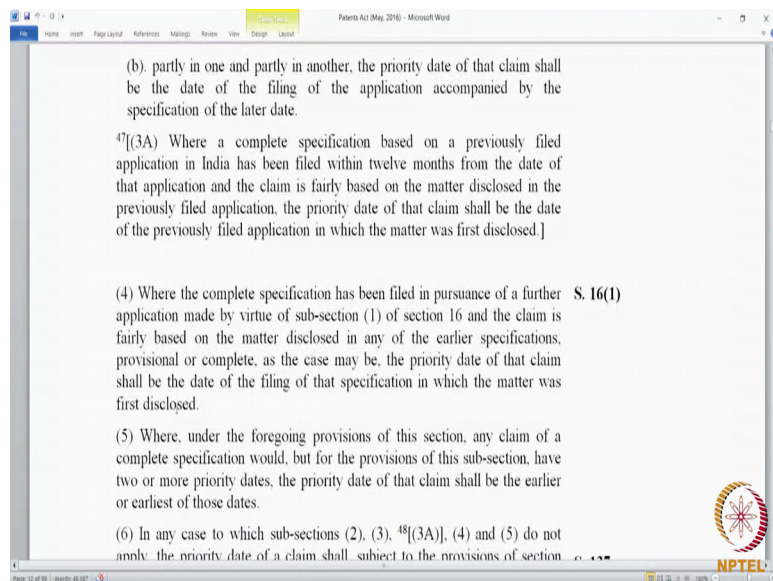
Now, together these 2 disclosures made one claim. So, in that case if the disclosure is made part in one and part in another, the priority dates shall be the date of filing the application accompanied by the specification of the later date. It simply means when the disclosure was completed that will be your priority date. So, it is again tied to the concept which we saw in the first case; a disclosure you can claim the priority from a disclosure if the disclosure is complete. If the disclosure is done in paths then we take the latter date because the latter date is when the disclosure became complete. So, against the same concept that is covered in a and b, a talks about an instance where the disclosure is made in 1 go, b talks about an instance where a disclosure is made in part first the result disclosure and followed by another disclosure at a later point in time. And in the in both the cases we see whether the disclosure was complete if the matter disclosed was got completed at the second instance, then the priority date will become will be the date on which the disclosure got completed.

Now, it is just not a case of part in one and part in the other, say there are ten disclosures and all the ten disclosures are now captured in one claim. So, which essentially means paths of the invention was disclosed in 10 bits and you followed it up with one single claim. Now the priority date of that claim will be when the disclosure got completed which was the tenth disclosure. So, the priority date will start from tenth disclosure because that is the point at which the disclosure was completed. So, 3 11 3 tells us that disclosure you can have to be complete and complete in the sense that what is

being claim should be fully in that disclosure if it is not fully in that disclosure. If it is in 2 different disclosures or 3 or more different disclosures then we see when the disclosures put together completed the invention that is now being claim.

So, if it happened at the third disclosure if the invention as it is claim was complete, then we regard the third disclosure as a starting point of the priority.

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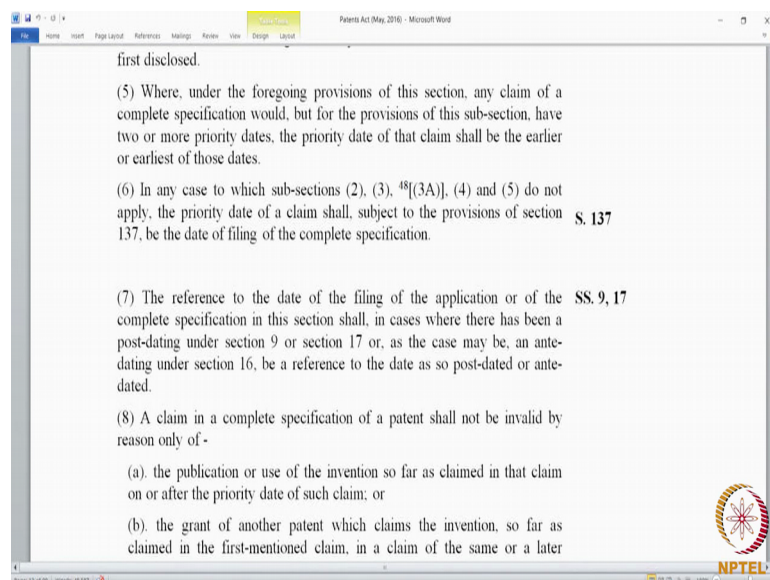
In 11 3 a, the fact that the disclosure when it is complete, now in 11 3 you had 2 instances where the first case was the disclosure was complete. So, you get the priority from that and the second instance where the disclosure was not complete it was in paths; when it is an paths we see when it got completed. Now the same concept is repeated in 3 A th where a complete specification based on a previously filed application in India has been filed within 12 months from the date of application, which is the normal case for any complete specification it has to be filed within 12 months from the previous application, which is in most cases it is a provisional. It they could be a case where it there was a purported complete which got downgraded to a provisional, but we understand in an normal case 12 months from the date of filing a provisional and 3 a continuous. And the claim is fairly based on the matter disclosed in a previously filed application let us assume that previously filed application to give your provisional.

The priority date of that claim shall be the date of the previously filed application the provisional in which the matter was first disclosed. The matter was first disclosed we

always understand it as first completely disclosed; the word complete is not there, but we understand that is this disclosures have to be complete. And when it is mention complete we are referring to the fact that what is covered in a claim, all the aspects covered in a claim should be disclosed at either in one go or in paths. So, if the disclosure within is different paths as we saw in 11 3, then whenever the disclosure got completed then that is the point at which the priority starts. 3 A talks about the disclosure where it is assumed that it is a complete one. So, if the disclosure is complete then we go to the first disclosure because it should be understood as the first complete disclosure.

So, whenever the disclosure is complete whenever the disclosure is or a claim is based on this matter that is disclosed in one go, then we regard the first point of disclosure. They understanding is that in the first disclosure the entire invention that we claim was fully disclosed. So, we go by the as a rule disclosure we go to the earliest point that is as a rule. In any case if you want to a fair basis, if the invention that is disclosed in a claim we look at the earliest disclosure to get the priority. The only case where we do not look at the earliest disclosure is if the disclosure is not complete, if the disclosure is an paths it is in over a period of time then we look at the point at which the disclosure got completed with regard to the matter claim.

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Eleven 4 introduces section 16, which you will know pertains to divisional applications and we have still not we have made a passing reference to divisional application,

divisional applications are filed when it could be filed voluntarily by the applicant or it could be also be filed based on an direction by the controller.

Divisional applications are filed when there are more than one invention claimed in a specification. The law states that they can be only one application for an invention if there are more than one inventions there have to be more than one applications. 11 4 talks about a instance where there is a divisional application, where a complete specification has been filed in pursuance of a further application made by virtue of subsection 1 of 16, and a claim is fairly based on the matter disclosed in any of the earlier specifications provisional or a complete as the case may be, the priority date of the claim shall be the date of filing the specification in which the matter was first disclosed. It is the same principle when an invention is fairly based on a disclosure that is made then the priority date will accrue from the date on which the disclosure was first made, when the matter was first disclosed the principle remains the same the claim will always look at the point of first disclosure. The only exception is if the first disclosure is not complete then we look at the point at which the disclosure got completed.

Now, this still goes by the same principle that the claim will always get the priority of the first disclosure, but in this case the application in walls a divisional. So, only it is just that it is not the usual case of a provisional followed by a complete, it is a case of a complete followed by a complete or a provisional followed by a complete and another complete, because divisional is always done on a complete you cannot do a divisional on a provisional for the simple fact that there are no claims in a provisional for you to determine whether there are more than one inventions in an application. The key to determine whether you have covered more than one invention in an application, whether you have violated the rule of unity of invention is to look into the claims.

So, if there are no claims for you to scrutinize, then it will be very hard for you to make the case that the application actually covered more than one invention. So, divisional always comes in where a complete is filed, and either the applicant feels that there are more than one inventions or the patent of it is feel so, the application can now be divided when we may mention the application we are referring to a complete specification can now be divided into a further application which is also a complete. Because whenever we talk about divisional, we are talking about dividing a set of claims into 2 applications. So, the set of planes which we are cover in one application since it was felt the cover

more than one invention they have to now become the part of another application. So, inevitably you are going to look at instances in a divisional where a complete specification got divided into one other complete specification; when we say divisional it is not the same application be divided in to 2 the main application now has a child.

So, we use the word parent and child mother and child. So, the first application filed application is regarded as the parent, and the later filed application is regarded as the child the other divisional. So, the principal remains is same in 11, claim gets the priority from the earliest disclosure what we call the first disclose. In this case the first disclosure can be either in a provisional or in a complete. So, the only difference here is in the earlier case we saw a provisional being followed by a complete in this it could be a complete that follows a complete the principle remains the same. And again priority or the rules of priority are relevant only when claims and the disclosures are filed in different points in time.

So, whenever you file a divisional, you are going to claim or remove certain claims and put it in the different application on a different date. So, your divisional is not going to have because you file the divisional later in time it is not going to have the same date of filing as of the mother application or the parent application. So, because there is a difference in some set of claims which you file later point and time, and a disclosure that was made at a different point and time you need to look at priority. As I said priority as a concept becomes relevant when the disclosure and the claim are made in at different points and time. And divisional is a classic case where the claims will have different filing dates if the classic case because you had filled application the patent of a feels or you as an applicant feel that there are more than one inventions and you file a divisional application removing some claims from the earlier application and making it into an independent application.

So, there is a difference or the later filled application or the divisional is file at a different point in time. So, whenever there is a difference in the time of filing the disclosure and the claim, the rules of priorities will settle. 11 5 is the blanket provision which covers instances the foregoing provisions of this section which is 1 2 3 3 A and 4 any claim of a complete specification would for the provisions of this subsection have 2 or more priority dates the priority date of that claims shall be the earlier or earliest of those dates. Now it is possible for a claim to have multiple priorities; multiple properties in the sense

that there was the disclosure made and there was a claim file there was another disclosure made and again a claim file, and you feel that there are some claims now is there are multiple disclosures made and multiple claims file based on them, it is possible that claims can be mapped not only to the 2 different disclosures, the same part of a invention that is covered in a claim could now we map to different disclosures, the disclosure you made on January first and some paths of the invention in it the one which you made on February first again had some path of the invention.

Now, you are able to look when you look at the priority of a claim you see that the claim is also covered in the February disclosure, and the claim is also covered by the disclosures you made in January. So, in that case you will look at the earliest point of the disclosure and claim the priority from the earlier state. This is in tuned with what we saw in section 11 4 that the matter that was first disclosed. So, you always go to the first disclosure, again the catchers the first disclosure as to be complete. So, in January when you made a disclosure if it was complete and in February you made the disclosure and again the disclosure got repeated here, if you make a claim then you are entitled to claim the earliest priority which is you will obviously, claim the disclosure that you made in January.

So, 5 says that where a claim has 2 or more priority dates and how does a claim have 2 or more priority dates by the share fact that there is a it can be mapped to different disclosures. You have a choice and especially in a case where you file ten provisional specifications and follow it up with one complete, they could be instance that you disclosed an aspect of (Refer Time: 30:12) invention to multiple times because you have to for the sake of completion you have to repeat what you had filed in an earlier occasion.

So, they could be overlapping disclosures and if a claim can get the benefit of multiple disclosures, 11 5 tells us that the applicant can claim the earliest disclosure which was complete in it is sense as the priority date. 11 6 is again another blanket provision and the relevant provision is section 137 which deals with international applications, in any case to which subsections 2 3 3 A 4 and 5 do not apply and you should understand that in any case where there is a difference in the timeline of the disclosure and the filing of the claim which is what it means. The priority date of claim shall subject to provisions of

section 137 which applies to an international application, be the date of filing of the complete specification.

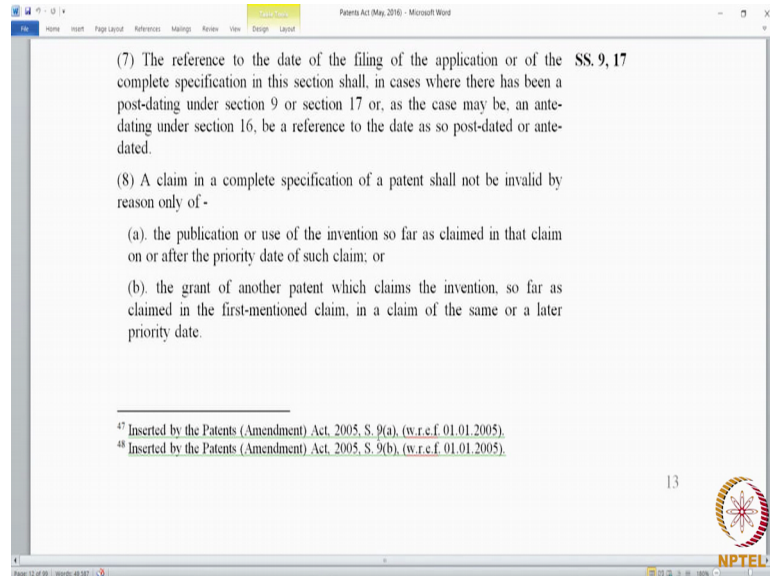
This is a very simple statement which says that if you have not made a disclosure and at one point and followed it up with the claim at another point in time, then in all other cases it is assumed that the disclosure and the claim are filed at the same point which is what you would do if you file a complete specification. Now for a moment remove this entire idea about a provisional specification followed by a complete from your mind, and assume that you are filing a complete for the first time and the complete has everything in it. The disclosure is perfect every aspect of the invention is completely flushed out and all the claims are there in your complete; when you file the complete there is no need for you to do the mapping because the disclosure, which is there in the descriptive part and the claims their file on the same date.

So, this is a case where the disclosure from which and we saw that all claims have to be fairly based on the disclosure that is a requirement in section 10, when the disclosure discloses all the aspects that are claim and both the disclosure and the claims are filed together which will be a case when you file a complete specification, then the complete specification will have the date of priority on the date of filing. The principle is so simple because there was no earlier disclosure. So, in cases where there is no earlier disclosure by which we mean there is no earlier provisional or earlier parent application followed by divisional and all these cases, there is no earlier disclosure whatsoever the first thing you file is the complete specification, and the complete specification fully discloses the matter then in that case the priority date will be the date of filing the complete specification.

So, 11 6 tells us that in 2 3 3 A 4 and 5 we had instances where a disclosure preceded the filing of the claim. In all those instances you have to do the mapping fair basis will be to an external document. In fixing removing these exceptions if there is only a complete specification file, then fair basis will be to what is disclosed in the same document. So, I hope you are able to get this, as long as the disclosure and the claims are in a single document then the priority will be the date of filing because it happened on the same way. If the disclosure is on a different document on a different date say a provisional followed by a complete, then you will have to do this exercise of mapping it back to the disclosure whether the disclosure was the first disclosure, whether the disclosure was

complete knowledge sense, if it was an path, then when did the paths get completed you have to look at all the rules that we saw in sections sub sections 1 to 5.

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11 7 talks about 2 concepts which are important from the perspective of understanding priority, 11 7 talks about both post dating which we have already seen in section 9 and it also talks about antedating, which I will briefly mentioned in the context of divisional applications. Now post dating is giving up a priority date and shifting the priority date to a later date let us put it that way I am trying to explain this from the perspective of priority dates. If you post date and application say you file a provisional on January first and you file a complete based on that provisional on June first, and for whatever reason you want to cancel the provisional you do not want the provisional to be there you want to withdraw the provisional. So, you indicate to the controller that please cancel my provisional and the consequence of cancelling the provisional is that the disclosure you made in the provisional is no longer can be used for determining priority.

So, the controller be forced to post date your application which means giving up the priority date on the provisional because now there is no provisional, and post dated to the date of filing the complete. So, the date of priority now shifts from January first to June first. So, this is post dating; you give up an earlier priority and shifted to a later date because you have removed the underlying reason for demanding that priority. What were the underlying reasons here? There was a provisional which you want to withdraw. 17

when we come to 17 I will explain that is again post dating in the context in another context. So, post dating we have already covered section 9 post dating is giving up an earlier date and moving it to a later date because of an underlying reason, 9 talks about the underlying reason as withdrawing the provisional. So, when there is no provisional you cannot claim or when you withdrawn the provisional you cannot claim anything based on that disclosure, because then it does not become a part of the official record and it will becomes very hard for a court or the intellectual property appellate board to look at this because the underlying document was not there.

So, the (Refer Time: 36:48) of his will not give you the priority if they underlying priority document in this case a provisional is removed. Antedating is the reverse of it, you file application on June first and because you have already filed something on Jan first January first, you could claim the priority of January first because the claim in the applications filed in June first actually is based on a disclosure that went in January first. Now understand on January first you file a complete specification which is complete in all aspects, the only issue with that complete specification is that you disclosed more than one invention. You realize that in June and on June first you file a divisional which is what section 16 is all about. When you file the divisional you are going to remove certain claims from the application filed on January first and put it in your June first application.

Now, the June first application though it has got claims and it is file on a different date, the disclosure can relate back to what you made in your January first application, what we call the parent of the mother application. So, the June first application becomes a child which they gets it is priority from the matter that was disclosed because it is just an exercise of removing the claims. It gets is priority based on the disclosure and the disclosure was made the first of January. In this case later filed application gets the priority of an earlier filed application. So, the later filed application for the process of priority is antedated. So, this is the opposite of post dating. So, post dating happens in the concept of giving up a provisional, antedating happens in instances where a divisional is filed and the divisional claims it is priority from the parent. Section 11 7 tells us that in cases where there is post dating or antedating the reference to the date of filing the application shall be the date as so post dated or antedated.

So, date of filing we saw in 11 6 pertains to the priority data where there is no difference in the date of disclosure of the matter disclosed, and the date of filing the claim. In other words date of filing is relevant where you file a complete specification if the date of filing is changed because of post dating or antedating, 11 7 tells us that the date of filing will then be the date so post dated or antedated.

So, in the first instance in section 9 if you give up your priority because you had to withdraw a provisional specification, then the date of priority also gets shifted to the later date. In section 16 if you file a divisional and if you are able to claim priority from the parent, then the date of filing is shifted to the date of filing the patent which means the date of filing as a default case the date of filing is the priority date. So, the date of priority is antedated or the date of priority in section 9 it gets post dated. So, 11 8 talks of the instances where a disclosure made will not affect the validity of a patent. Now for a patent to be valid it has to satisfy the basic requirements of novelty inventive step and utility or the fact that the invention is capable of industrial application. Now these 3 concepts if it is not there or if it is not proved to be there can be reasons for invalidating a patent.

Priority is tied to the concept of novelty. So, if the priority is wrongly claimed if the date on which the priority was actually claimed, there have been certain disclosures then the patent can be invalidated for lack of novelty. So, invalidity is understood as the absence of the requirements of patentability, that is one way to understand it because invalidity can also come because of certain grounds other than the grounds for patentability, it could also come because of certain other grounds like fraud could be a ground for invalidating a patent under section 64, but in this context for the sake of priority we understand invalidity as a concept that can raise a challenge on a patent, if the priority is not claimed in the right way or if there is a disclosure before the priority date. Now 11 8 tells us that a claim in a complete specification of a patent shall not be invalid by reason only of publication or use of the invention, so far it is claimed in that claim on or after the priority date of that claim.

Now, we have been telling you that anything that happens after the priority date any disclosure that happens after the priority date cannot affect your invention. It cannot be a reason for determining invalidity it cannot be a reason for challenging the novelty of the application. Now this is the reason why many inventors file a provisional and later on go

for conferences or go for discussions and disclose the invention to others, because the day you file your provisional you can claim priority from that date.

So, say assume that you file a provisional on June first, and on June seventh you make a disclosure of the invention to an audience. Now because you had preserve the priority before you made the public disclosure under 11 8 a your disclosure which you made on June seventh cannot be a reason for invalidating your patent. It only is it is clearly says that any disclosure in 11 8 a it says any publication or use on or after the priority date shall not be a reason for invalidating the patent.

So, any disclosure you make after the priority date does not affect your novelty and it cannot be a reason it cannot be anticipation because it happens after the date. So, anticipation something have which happened before the date of your disclosure. 11 8 b says the another instance the grant of another patent which claims the invention, so far as claimed in the first mention claim, in a claim of the same or a later priority date. Now assume that you have preserved your priority on June first 2017, now if another patent gets granted after you preserve the priority that cannot be a ground for invalidating your patent. So, far as your claim had a priority that was earlier to it or on the same day. So, the later patent see patents can get granted at different points and time. So, you could file a patent in 2017, your competitive could file it just after few days after you and you could preserve you could have a priority before your competitors priority because you are you file the complete specification before your competitor.

Assume that your competitor files it after a week of you filing your application, but for some reason the competitor gets an earlier grant it is quite possible because they could be objections raised in your case and it could take you could take some time and replying to it, for whatever reason the competitor got a grant before you. Just because your competitor got a grand before you, if his priority is not before you us his grant cannot be a reason to invalidate your patent this is what 11 8 b tells us. The grant of another patent which claims the invention, so far as claimed in the first mention claim in a claim of the same or the later priority date. So, as we mentioned grant of a patent cannot challenge the priority date of an earlier invention, if the claim has the same priority date or a later priority date. Now constantly there are issues which come with regard to patents that are filed at the same time I mean most of the hypothetical it is interesting to look at these dates and to post questions as to when claim gets is priority from.

If 2 inventors invent us invention without any cooperation between them parallely they invent the same invention and they file a patent application on the same day. So, let us take both of them file the a patent application on June first 2017, one of the inventors get a patent granted earlier and time. Now the patent that is granted earlier cannot be the reason for questioning the other persons invention because both their priorities are the same. So, they will be allowed to continue based on the language in section 11 8 b, because if the grant of the other patent which claims the invention, so far as the claim in the first mention claim, in a claim of the same or later priority. If the priority is later obviously, we know that it cannot be a ground for challenge, but if even of the priorities same 11 8, 8 else us that it cannot be a ground for challenge.

So, priority has to be prior in time. So, the same date again cannot be the ground for a challenge. It will be a very rare case where 2 people having the same invention claiming it in the same language file it on the same day as I said it only happens in hypothetical cases. But if that is to happened say that by some sweet coincidence 2 people cover the same invention and file it on the same day, under 11 8 b both of them will survive one cannot challenge the other because it says the grant of the other patent in a claim of the same or later priority date will not affected. So, if this the same date it cannot effect the; or it cannot be used to validate the other patent.

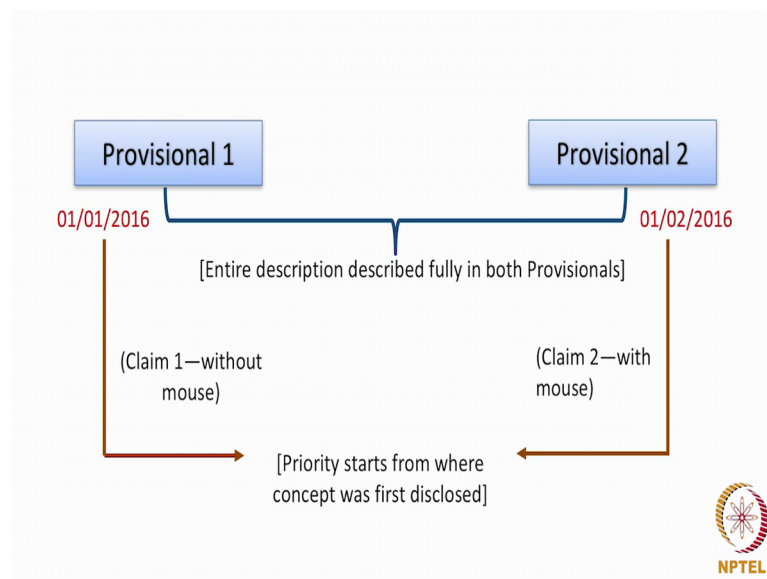
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Can a claim have two or more
priority dates?



Can a claim have 2 or more priority dates? Now there is a difference in approaches from various jurisdictions, some jurisdictions have held that claims cannot have 2 or more priority dates for the simple fact that if it is completely disclosed at one point and time that is the only priority date, other jurisdictions have held that claims could have different priority dates based on if the matter on which the claim is based on was disclosed repeatedly.

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For instance if there is a mechanical device which is a combination of 5 existing devices say there is a camera, there is a timer, there is a touch screen, there is thermostat and there is a accelerometer just say that a mechanical device with these 5 things. Now if the description of this device came out in a provisional specification on Jan first, the first provisional was filed with all the 5 components on Jan first. On February first this same disclosure is mailed, but now they also add a peripheral to it. They add a say a mouse by which you can controlled as device it has a touch screen, but you can also scroll it using the mouse. So, the mouse was added in the February disclosure.

Now, in both the disclosures you will find that the entire invention with the 5 components is described fully in the first one and in the second one. In January you have first; first disclosure it is again repeated in February first. Now because you have 2 disclosures, you need to now know to which disclosure does claim one go; assume that claim one covers all the 5 components without the peripheral without the mouse claim to

covers the mouse. Now for claim one there is a choice of going by Feb one disclosure or by Feb 2 disclosure there is a choice; law says if there are 2 disclosures we go to the earliest, the losses if there are 2 disclosures because the by the nature of covering inventions you have to describe it you have to describe it in entirety sometimes there is repetition in provisionals you will find that if provisionals are filed over the same inventive concept over a period of one year say you find 10 provisionals, they will be repetition of the same concept. So, law makes it very clear that wherever the concept was first disclosed that is way the priority starts from.