

**Patent Law for Engineers and Scientists**  
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**Lecture - 26**  
**Professor's Interaction - 01**

Over the past few days, we had received some comments on the forum, some of you have been active on the forum asking certain questions and others have been active answering some of those questions which others have raised.

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**Rohit Singh** - Please explain the meaning  
of 39 of 1970



I have seen certain questions which I thought I should bring to your attention. Rohit Singh had asked; what is the meaning of 39 of 1970? So, if you see the patents act 1970 the title it is followed by a statement in parenthesis within brackets 39 of 1970. Just simply means it is the 39th act passed by the parliament in the year 1970. So, it is actually act 39 of 1970, all the acts that are passed by the parliament in a particular year are numbered sequentially. So, act one of 1970, act 2 of 1970 the patents act which was passed was the 39th act that was passed in that particular year.

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**Kirti Deshmukh** - Request for colour coded Acts and Rules



Kirti Deshmukh has asked about the colour coded act and the rules that are still under preparation when something is ready we will let you know where it is available.

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**Pallav Prince** - Let supposed a black ink pen is already patented by someone. We modified that pen and developed new product have the same appearance but that is a blue ink pen. Then can we make the patent for this new blue ink pen?



Pallav Prince had asked a question which requires some more detailed answer, probably in when we do the lessons on inventive step and novelty and patentability probably this question will get addressed. Now the question is let us suppose a black pen is already patented by someone, we modified that pen and developed new product have the same appearance, but that is a blue pen; then can we make the patent for a new blue ink pen.

This is a very simple scenario as we know now that for patentability there are three conditions have to be satisfied, the invention has to manifest itself in a process or a product, and the three conditions being one: it has to be new or it should involve novelty, two: the invention should be should involve in inventive step, which is regarded as something that is not obvious to a person skilled in the art and three: it should have utility or it should be capable of industrial application.

Now, was this obvious to a person skilled in the art there is a question we could immediately ask. The fact that there are existing black ink pen and with the same appearance you now make a blue ink pen, now that would give you as the answer. But in a normal case understanding patentability will involve applying the three test of patentability to the invention, and also understanding the background art.

So, in a particular field say if there was a real problem in developing a particular variation or an improvement to an existing invention then that could qualify for a separate invention in itself. So, modifications and variations and improvements are also inventions. So, we will not dismiss them as seeing that they are trivial that is not the yardstick that the patent office takes, rather they will see whether that modification, variation or improvement was capable as satisfying the criteria of patentability that is novelty inventive step and industrial application independently.

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- Shruthy S** 1. As Plant Variety Protection Act 1970 protects asexually reproduced plants, why is tuber producing plants exempted from this Act?
- 2.Can vulnerable species be patented?



Shruthy S had asked a question which is not covered by our syllabus, she had asked as the plant variety protection act 1970 correction, it is not 1970 it is 2001, asexually reproduced plants, why is tuber producing plants exempted from this act and 2 can vulnerable species be patented. Plant varieties in India we have a separate regime for the protection of plant varieties, some countries under the world trade organization have patents granted for plants too. So, countries have an option of having a separate regime, a sue generous regime which means a separate regime on a independent regime in itself for protecting plant varieties or countries could adopt and modify their existing patent regime for granting protecting for plant varieties.

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[www.plantauthority.gov.in](http://www.plantauthority.gov.in)



In India we have chosen the path of having a separate legislation. So, you will find more information on that in the website WWW dot plant authority dot g o v dot in.

P. Bharathi had raised a question why every country required separate patent; why do not we have world level patent, is there any possibility of filing for the same invention in 2 different countries, is there any differences in benefits to a patentee from every country.

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**P. Bharathi** - Why every country required separate patent?

Why don't we have world level patent?

Is there any possibility of filing patent for the same inventions in two different countries?

Is there any differences in benefits to the patentee from every country?



Now countries, the way in which patent law is evolved, the patent law have evolved locally in the sense that they were geographically specific the laws of one country just like any other law.

Your; the law of contracts or the law with regard to buying and selling property the law with regard transaction or the law with regard in cooperation of from companies, we do not have a global law. Similarly patent law is also geographically specific pertaining to the territorial limits of a particular country. In India if a patent is granted granting a patent alone does not solve everything in infact patent have to be enforced and the enforcement mechanism happens in the courts of law.

So, granting a patent in itself is not an end, patent survive for a 20 year life from the date's application and during this time patents need to be enforced and enforced means is there is an act of infringement committed by third party, the patentee should use the legal machinery to stop that infringement. So, enforcement happens in the courts and courts as we all know are bound by the jurisdictional limits within which they operate. So, in India the courts in India can enforce a patent that is granted by the patent office in India. Similarly a patent that is granted in Sri Lanka can be enforced by the Sri Lankan courts it cannot be enforced in India.

This is how all the laws have developed not just patent law. So, laws are specific to the territory in which they have application. The reason why we do not have a world level

patent is that we still do not have a world level in cooperation of companies, and we do not have a world level recognition of a property owned by one person in another country. In fact, even a contract that is signed between 2 parties becomes hard to enforced it in another country, unless that country is able to bring in some kind of a jurisdiction for looking into that contract.

So, why we do not have this there has been efforts to harmonize the patent laws of different countries, but we still have not reached the point where we can have a global cooperation on granting and enforcing patents. Is there a possibilities of filing patents for the same invention in different countries? Yes we have 2 mechanism which will be covering in the course of our lectures; one is what by filing a conventional application by which you can file an application in one country and pick it up for prosecution in another country or you could follow the patent cooperation treaty route, the PCT route. These are 2 mechanisms or international arrangements for filing patent applications in different countries.

Are there any differences in benefits to the patentees from every country? Patents are exclusive raise granted over inventions, all countries grant these rights enforcement in some countries could be much more effective and based on the technology and the market granting patents in certain countries could have a benefit to the person who wants those patents. So, otherwise the terms are the same the rights that conferred by the patent are the same, but their territorial is specific; again to emphasize what is granted in India cannot be enforced across the border say in Bangladesh or in Sri Lanka.

I should make a special mention about mister Pankaj Kumar he has been very active on the forum when he is been answering others queries too. We are watching all the answers. So, if there is an intervention that has to come from our side we will certainly do that.

Thank you.