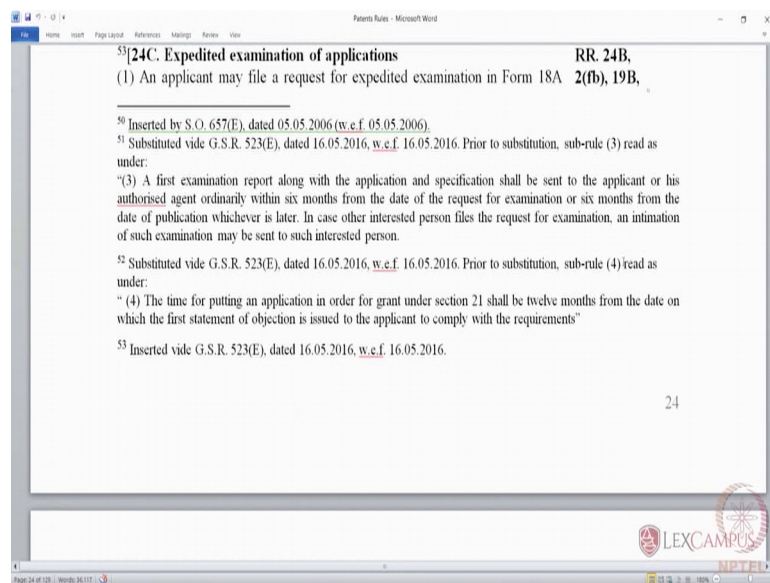


Patent Law for Engineers and Scientists
Prof. Feroz Ali
Department of Management
Indian Institute of Technology, Madras

Lecture - 30
Patent Prosecution: Publication and Examination - II
Expedited Examination of Application

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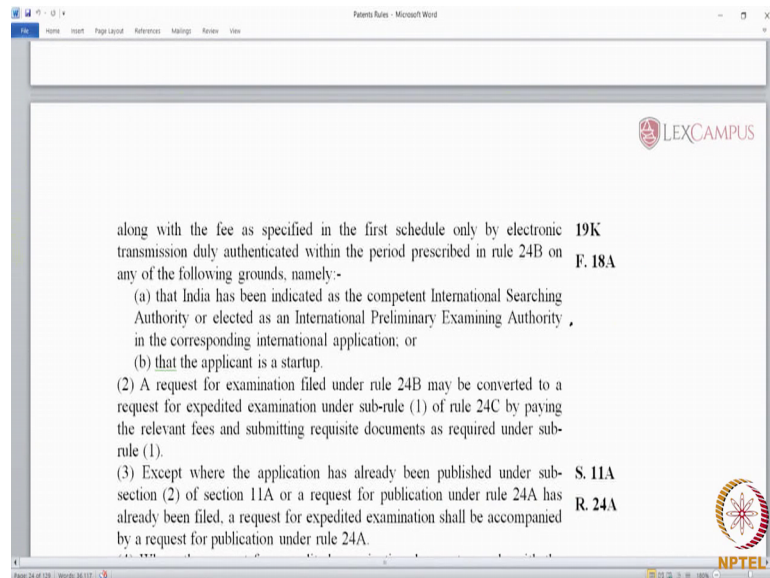


Rule 24 C; expedited examination of application. The patents amendment at 2016 introduced a new process of examination by which an applicant could get the examination of the application expedited. This is introduced in rule 24 C. In rule 24 B, we had the occasion to see how the examination process works and we saw the various timelines that happens after a request for examination is made. And we also found that the reference made by the controller to the examiner is the only event which does not have a stipulated timeline. It is just mentioned in the rules, it shall be done as soon as possible, but there is no specified timeline as to how quickly this reference has to be made.

Apart from that every other process within the examination or soon after the request for examination is made is drawn out by way of a timeline. Expedited examination is a special privilege that is allocated to 2 categories of applicants which allows the applicant to fast track the examination of the application. Now let us see who are those 2

categories are. Rule 24 C 1 states that an applicant may file a request for expedited examination in form 18 A. Form 18 A was again introduced by the patents amendment rules 2016. Along with the fee as specified in first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24 B on any of the following grounds namely.

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Now these are the 2 grounds on which you could make an expedited examination or a request for an expedited examination. Again this is a request for an expedited examination.

Namely; a, that India has been indicated as the competent international searching authority or elected as the international preliminary examine authority in the corresponding international application or the applicant is a startup; startup is defined in the rules, startup has special status in the first schedule, first schedule is the schedule which describes the fees. Startups are entitled to fees at the same level as individuals. So, this is a privilege that is given to startups. Startups will be treated on the same fees structure as individuals that are natural persons. So, natural persons and startups are now together grouped as one category for the purposes of living fees.

So, you can make the request for an expedited examination under rule 24 C using form 18 A provided you have chosen India as the competent international searching authority or elected the international preliminary examination examining authority in India for the

corresponding international application. Now category a resumes that you have filed an international application category a is not opened to an applicant who has not filed an international application. So, expedited examination request for expedited examination as per category a can only be filed by an applicant in India who has filed a forum international application who has filed an international application and has chosen India as the international searching authority or the international preliminary examining authority.

Now, India is international searching authority as well as an international preliminary examining authority this was introduced by the patent amendment rules 2013. Now by this they created Indian international searching authority that is rule 19 A introduced the international searching authority in India and rule 19 F created the Indian international preliminary examining authority. So, these 2 authorities we created by the patent amendment rules 2013.

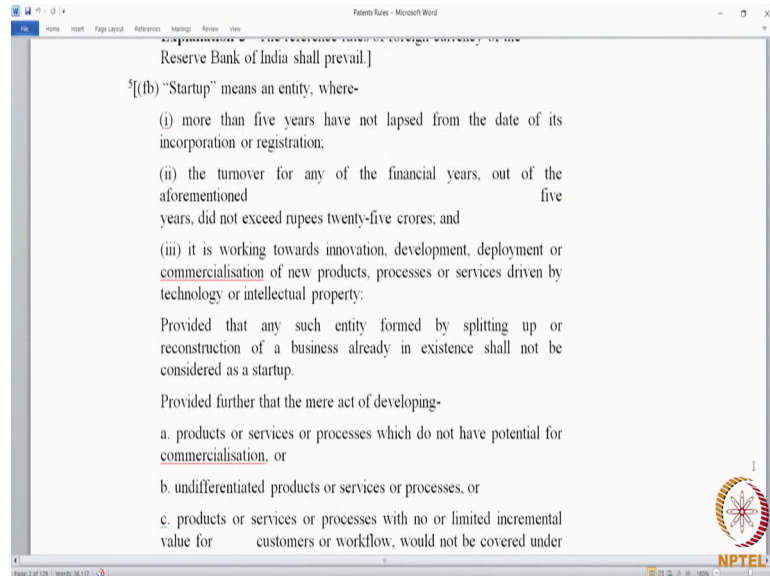
So, the first category pertains to cases where an applicant has filed an international application and has chosen India as the international searching authority or the international preliminary examining authority and these changes by where introduced into the patent rules by the amendment in patents amendments rules 2013; the 2013 amendments made the Indian international searching authority and the Indian international preliminary examining authority came into been by that amendment.

So, that is the first category for you to make a request for an expedited examination you need to file a international application in the absence of filing an international application category a will not be open to an applicant. So, its mandatory to while seeking before filing form 18 A that you have first filed an international application and have chosen India as the either the ISA; the international searching authority or the IPEA; international preliminary examining authority form 18 A can only be filed by an entity other than a natural person or a startup provided there is an international application emplace.

So, the first category pertains to an applicant who was already made an international application in India and has chosen India as the ISA or the IPEA. The second category its quite simple if the applicant is a startup if the applicant is a startup as defined under the

patent rules then the applicant can make a request for an expedited examination. Now the rules explain give the definition of a startup in rule 2 f b a startup is defined in rule 2 f b.

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Now, let us look at the definition of a startup; startup is defined in rule 2 f b was introduced by the patent amendment rules 2016 and this was a part of the startup India policy that the patent office now has relaxed fees and expedited examination for startups. So, these are 2 privileges that are extended to startups.

One you have a relaxed fees structure fees structure for the startup is the same as it is for natural persons and startups can also seek the privilege of an expedited examination the rules define startup as startup means an entity where one more than 5 years have not lapsed from the date of its incorporation or registration. So, it is not been in existence from more than 5 years 2 the turnover for any of the financial years as out of the aforementioned 5 years do not exceed rupees 25 crores; the turnover there is a cap on the turnover in the 5 years of its existence it should not exceed 25 crores 3 it is working towards innovation development deployment or commercialization of new products processes or services driven by technology or intellectual property now this is the third requirement.

The first requirement is a requirement with regard to its existence the time periods in it became into existence that should not be more than 5 years the second requirement pertains to its turnover the turnover should not exceed 25 crores in the 5 years since its

incorporation or registration. So, the first requirement was a requirement with regard to the term for how long it is been in existence the second requirement is with regard to its turnover its financial position the third requirement is with regard to what the startup does. So, the first requirement is the life of the startup whether it is young or old in the sense that is it. If it is less than 5 years it qualifies for the startup status second requirement is a financial requirement to see that the turnover is not in excess of 25 crores over the years the third requirement pertains to what the startup does the work the startup is involved in.

Now, the third requirement specifically states that it should be working towards innovation development deployment or commercialization of new products processes or services driven by technology or intellectual property. So, a startup could be in the business of developing new products new processes or new services it has to be driven by technology or intellectual property. Now the term intellectual property may broaden the idea of a startup for instant if there is a publishing company which develops copy write, it is a content providing company it develops copy write in an innovative way say in it makes online courses and it delivers video lectures to its students.

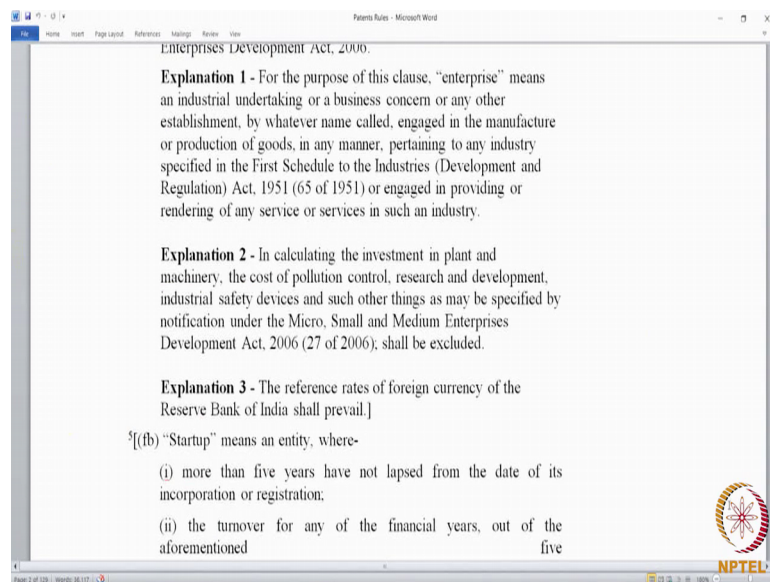
Now, this could technically be treated as a startup, because it works towards innovation in the education sector and it produces new products processes or services; services being education being delivered online driven by intellectual property because all the content that is delivered can be protected by copy write. So, this startup could technically qualify for a status under the definition though it may not have anything to do directly with technology, because the option that is given in the definition is that you could be working on technology or you could be working on intellectual property at in other instants.

If there is a design company which makes logos or trademarks for its customers using an online platform again you could find that this could qualify for a startup status because it is dealing with intellectual property and the question arises what will these forms who are dealing with intellectual property in a different segment say copy write or trademarks will have to do with filing of patents that is a larger issue that the startup itself will have to address, but if the startup is working on these lines either on technology or on intellectual property that is a qualification or that is a requirement that will be looked into by the patent office before allowing the startup the benefits under the act on the rules.

Now how does the patent office determine, whether a startup; is a startup now for that there is a form that has to be submitted by a small entity or a startup. Now if you claim the status of a startup you have to file form 28 to claim that status form 28 was again introduced in 2016. So, first startup form 28 has to be submitted to claim this status of a startup, because the first part of the definition says that it should not had been in existence for more than 5 years since its registration or incorporation.

Now, incorporation we understand as a body cooperate registration could be something else completely because you could register MSME; micro small medium enterprises enterprise.

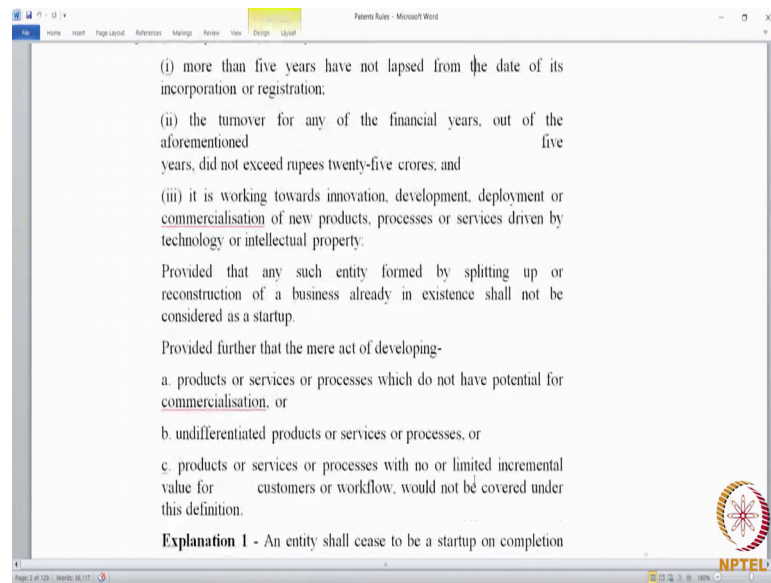
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Under the MSME act of 2006, MSME development act of 2006 and that registration will qualify you for the status of a small entity or micro or a medium entity. Now you could register yourself as a partnership form and still you could claim the benefit of a startup you could incorporate yourself as a private limited company. And hence claim the benefit of a startup you could incorporate yourself as a one person company which is a new entity that is been created by the Companies Act.

So, in 2013, you could do any of these things and claim the benefit of a startup, but the point is to claim the benefit you have to file form 28. And you have to claim that is startup status mere registration or incorporation under any of the acts or the legal system will not allow you to claim the status you have to file form 28 to claim the status.

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So, the 3 things the fact that the term has to be young the startup should be in a system for less than 5 years its financial should not be more than 25 crores. And it should be working towards innovation development or deployment or commercialization of new product services and processes driven by technology or intellectual property you know it should be either be technology driven or IP; intellectual property driven these are 3 requirements.

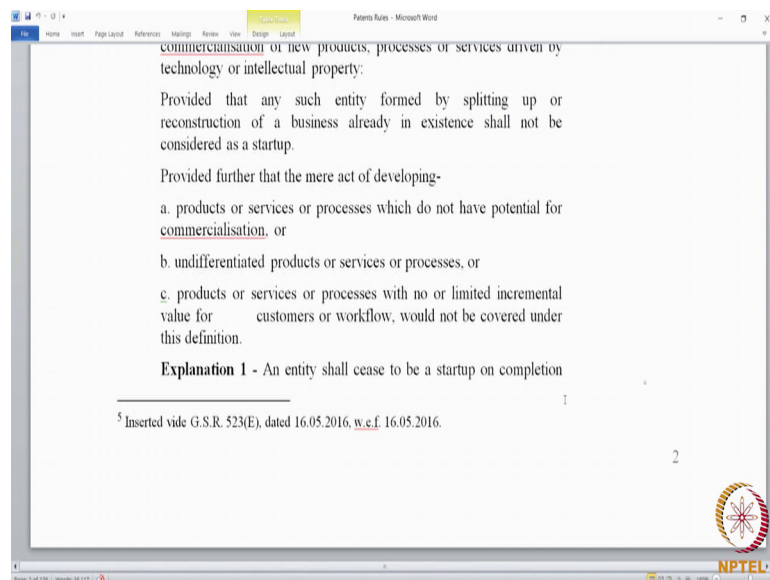
Now, these are the positive requirements now the rule the definition further goes to say what will not amount to a startup they are mentioned in the provide zone provided that any such entity formed by splitting up or reconstruction of a business already in exist shall not be considered as a startup. So, existing business is shelled of into a smaller unit it will not amount to a startup. So, you have to start something a fresh to claim this status provided further the mere act of developing a product services or processes which do not have potential of for commercialization or undifferentiated product or services or processes or product or services or processes with no or limited incremental value for customers or workflow would not be cover under this definition.

Now, the third part of the definition as we mentioned was the function what function does the startup do it is explains that this startup should be doing something substantial if it is not developing products which do not have a potential for commercialization it will not be accorded the status of a startup if it is coming out with undifferentiated products

services or processes there is no innovation the products are undifferentiated. Again the benefit will not be granted the products or services or processes with no or limited incremental value for customer or workflow.

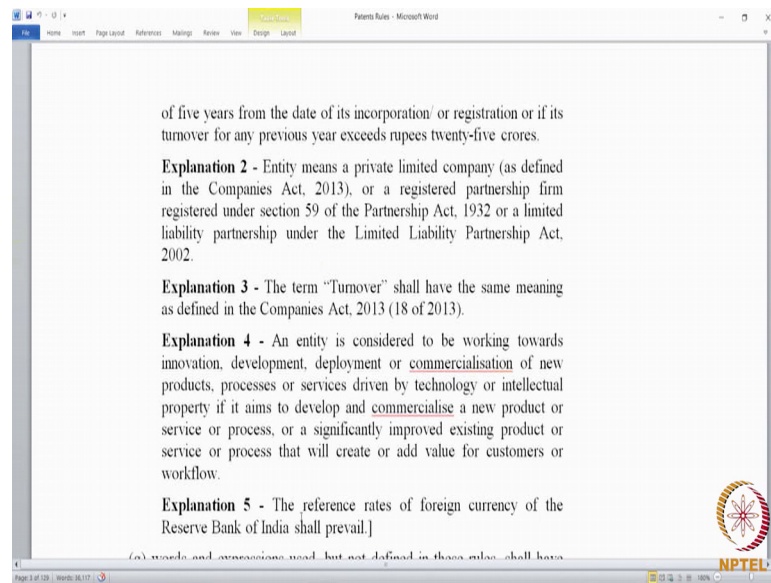
Now if there is no value addition by the products services and processes created by the startup for the customer, then again it will not be covered under this definition. Now these are broadly worded phrases. Now you can assume that the decision on whether to call whether to grant this status of a startup will rest with the controller, because the controller the form has to be submitted to the controller and the controller will have to take a call on that.

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Now, we have few explanations too to the definition. So, first we saw; what are the 3 positive requirements then we saw 2 exceptions what will not amount to a startup. And now we have 5 explanations explanation one an entity shall. So, the explanation says when a startup shall see is to be a startup explanation one says that if there is a startup when the startup will lose its status of a startup explanation one an entity shall see is to be a startup on completion of 5 years.

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From the date of its incorporation of registration or its turnover from any previous year exceed rupees 25 crores. So, once it crosses the 5 year period its sees us to be a startup and its income or its financials turnover exceeds 25 crores in any of those previous years then its sees as to be a startup. Now this is condition 1 and 2. So, if it crosses the threshold in one or in condition 2 it sees as to be a startup.

Explanation 2 entity means a private limited company as defined the Companies Act 2013 or either registered partnership form register under section 59 of the Partnership Act or the limited or a limited liability partnership under the limited liability Partnership Act 2002 and these are the 3 entities that could be considered for the startup status. So, a the registration is required under or incorporation is required under these 3 enactments for an entity to be regarded as a startup which also tells us that; if you are registered under the MSME development act- the micro small and medium enterprises development act 2006 then you will be accorded the status of a small entity because small entity has a different fees structure under the patents act. So, to clay to be a startup you need to be registered as an entity in one of these 3 enactments either the Companies Act or the Partnership Act or the limited liability Partnership Act.

Explanation 3 states that the term turnover shall have the same meaning as defined in the Companies Act what is the definition for turnover what the turnover means. So, the same definition will apply in this case as well explanation four states that an entity is

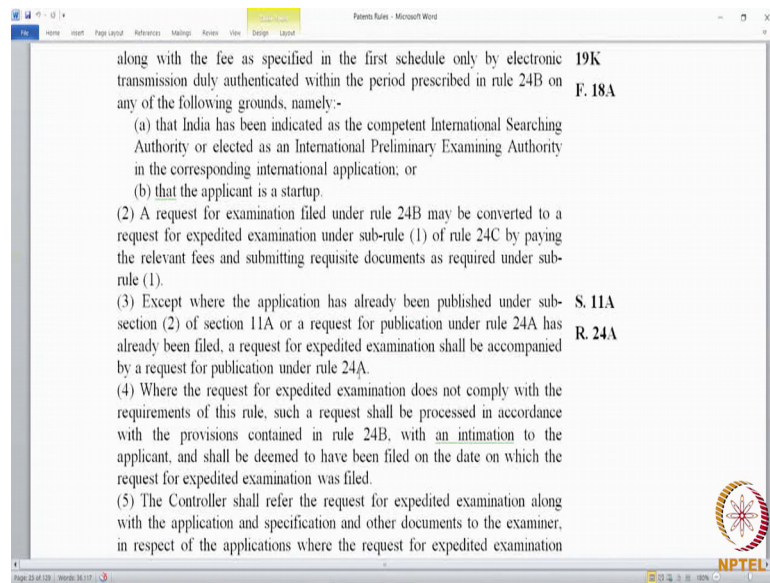
considered to be working towards innovation development deployment or commercialization of new products processes or services driven by technology or intellectual property this is the third condition if it aims to develop and commercialize a new product or service or process or a significantly improved existing product service or process that will create or add value to customers or workflow again the improvement or the value addition needs to be significant.

Now we saw this in a different language in the second exception which said that-undifferentiated products processes will not be considered for granting status of a startup, then if it is not commercialized then again it will not have status of a startup and incremental value limited incremental value or no value addition will again not be considered for status of a startup.

Now, this is differently phrased it just says that the entity should aim to develop and commercialize new products services or processes or significantly improve existing products it is not a mere or an incremental improvement it has to be a significant improvement. So, again these are with regard to what is significant again, because the entity will now have to form 28 I, it will be reasonable for us to expect that the controller will be taking a call on that explanation 5 the reference rate of foreign currency of the Reserve Bank of India shall reveal.

Now if there is a startup which is a foreign entity or entity does has some operation in a foreign country foreign entities still will have to be registered under one of these acts because that is when it will be regarded as an entity, but if the turnover is in say in dollars in US dollars then the reference rate for foreign currency of the Reserve Bank of India will apply to see whether they are exceeded the 25 crore turnover mark. So, that is the definition of startup an elaborate definition it has got 3 positive components 2 provisos and 5 explanations.

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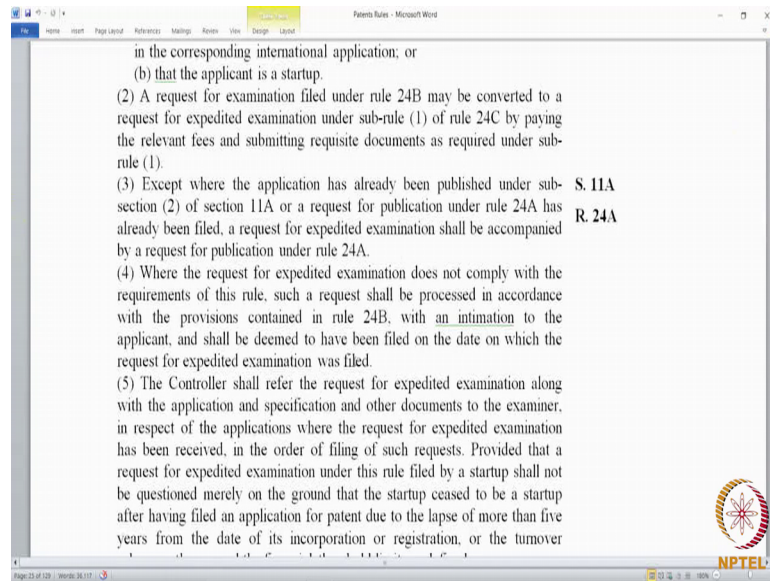


Sub rule 1 sub rule 1 gives the 2 categories of applicant who can claim the status of a startup the first one the applicant should have preferred an international application and the applicant should have chosen India as the ISA or the IPEA the second category is that the applicant needs to be a startup.

So, we understand the first category if in the first category the applicant is also a startup then the applicant need not worry about taking an international application, whereas the first category applies to a non-startup that is an entity which could be a small entity or it could be a corporate entity these are the 3 categories you could either be a natural person or a startup that is one category for the purpose of fees you could be a small entity or you could be a corporate entity which is the other category which is a category other than a natural person startup or a small entity.

So, if you fall within that category, if you are not a startup, then if you need to expedite an examination of an application you must file an international application. Otherwise, there is no way an entity which is not a startup can get its application expedited the examination of the application expedited unless there is a corresponding international application filed. So, if there is no international application entity which are not startups will not be able to take the expedited examination route.

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Now, root is now explained how does the patent office proceed when a request is filed sub rule 2 states that a request for an examination is filed under rule 24 B may be converted to a request for expedited examination under sub rule 1 of 24 C by paying the relative fees and submitting requested document as required under sub rule 1.

Now, if you had taken a request for examination under rule 24 B which is a normal request for examination which we would do using form 18 you can convert that into a request for expedited examination by paying the relevant fees the relevant fees are mentioned in the first schedule. Now this allows you to convert a request that you have already made a normal request for examination into an expedited request.

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The screenshot shows a Microsoft Word document titled 'Patents Rules - Microsoft Word'. The document is Form 18A, titled '164 [FORM 18A] THE PATENTS ACT, 1970 And THE PATENT RULES, 2003 REQUEST FOR EXPEDITED EXAMINATION OF APPLICATION FOR PATENT [See section 11B and Rule 24C]'. The form is divided into two main sections. The top section is for office use only, containing fields for RQ No., Filing Date, Amount of fee Paid, CBR No., and Signature. The bottom section is for the applicant, starting with '1. APPLICANT(S)' and sub-sections for (A) NAME, (B) NATIONALITY, and (C) ADDRESS. Below this is section 2, which contains two alternative paragraphs for requesting expedited examination. The first paragraph asks for the patent number, filing date, and invention title. The second paragraph asks for the patent number, filing date, and invention title, and mentions that the application is based on a PCT application. The form also includes an NPTEL logo in the bottom right corner.

Obviously, if you are claiming the status of a startup then you will have to file certain documents to claim that privilege. So, if you look at form 18 A if the form that is taken along with the request for expedited examination.

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The screenshot shows the continuation of the Microsoft Word document from the previous slide. It displays the text from section 2 of Form 18A, which contains two alternative paragraphs for requesting expedited examination. The first paragraph asks for the patent number, filing date, and invention title. The second paragraph asks for the patent number, filing date, and invention title, and mentions that the application is based on a PCT application. Below this is section 3, which asks the applicant to indicate the grounds applicable in case of request for expedited examination. The form also includes an NPTEL logo in the bottom right corner.

Now in class 2 you will find that there is this statement where the applicant makes a the request for examination bearing dash for application for a patent number dash filed on these numbers have to be filled by the applicant may be converted to a request for expedited examination of the patent application under rule 24 C.

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Patents Rules - Microsoft Word

LEXCAMPUS

that the applicant is a startup, or
 that India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application.

ADDRESS FOR SERVICE INDIA:

Dated this day of 20
Signature
Name of the signatory

To

NPTEL

So, by filing this form this form can also be used to convert an existing request, now this is mentioned in class 2 and the class 3 the applicant will have to show whether it is a startup or whether it is as indicated India as the ISA or the IPEA. Now this has to be filled. So, going back to rule 24 C sub rule 2 tells the instances where you could convert an existing request for examination to a expedited request by paying the relevant fees and that is done by form 18 A because form 18 is already filed.

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Patents Rules - Microsoft Word

after having filed an application for patent due to the lapse of more than five years from the date of its incorporation or registration, or the turnover subsequently crossed the financial threshold limit, as defined.

(6) The period within which the examiner shall make the report under subsection (2) of section 12, shall ordinarily be one month but not exceeding two months from the date of reference of the application to him by the Controller. S. 12(2) R. 24B(2)

(7) The period within which the Controller shall dispose of the report of the examiner shall be one month from the date of receipt of such report by the Controller.

(8) A first statement of objections along with any document, if required, shall be issued by the Controller to the applicant or his authorised agent within fifteen days from the date of disposal of the report of examiner by the Controller.

(10) The time for putting an application in order for grant under section 21 shall be six months from the date on which the first statement of objections is issued to the applicant. S. 21

(11) The time for putting an application in order for grant under section 21, as prescribed in sub-rule (10) may be further extended for a period of three months on a request for extension made in Form 4 along with the prescribed S. 21

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NPTEL

In that case sub rule 3 states that except where the applications already been published under sub section 2 of section eleven a or a request for publication under rule 24 A has already been filed a request for expedited examination shall be accompanied by a request for publication under rule 24 A. Now this simply means when you file form 18 A if you have not already filed form 9 you have to file it along with form 9 form 9 is the request for publication.

Now, the idea as why would you make an expedited request for examination if your application itself is not published because if your application is not published there is no way the patent office is going to examine your application. So, it becomes necessary for the applicant to take form 9 if he has not already done it along with form 18 A. So, sub rule 3 says that when you are making a request under form 18 A you have to accompany it with form 9 which is a request for publication.

Now, the 2 cases where you will not do that are its quite obvious the 2 cases where you will not do that is the application is already published there is no need to then take form 9 or the form 9 is already filed. So, those are the 2 obvious cases where you will not file a form 9 with a form 18; it is already done its already published or the form is already filed sub rule four states that where the request for expedited examination does not comply with the requirements of this rule such a request shall be proceeded in accordance with the provisions contained in rule 24 B with an intimation to the applicant and shall be deemed to have been filed on the date on which the request for expedited examination was filed now 24 B you will remember is the request for a normal examination or what we call request for examination.

Now, if you take or if you file form 18 A and request an expedited examination, but the controller feels that you have not complied with the requirements of the rule for instance you are not a startup or you have not filed an international application then it will be very hard for the controller to accord the status of an startup for your application in such cases the request shall proceed in accordance with rule 24 B; rule 24 B we know is the normal application an normal examination process the examination of an application.

Now, rule 24 B is normally initiated by filing form 18, but in this case because the applicant chose to file form 18 A instead of form 18, but without satisfying the conditions laid out in 24 C the application will proceed as a normal application. So,

though you have taken a request for expedited examination if you do not comply with the requirements in the rule then it will proceed as a normal request for examination under 24 B.

Understand that 24 B is for the normal we do not say normal it is the request for examination the ordinary one 24 C is the expedited request if your form 18 A does not satisfy the requirements under the rule then it will proceed as a normal examination the date will remain the same because the date of filing the form 18 A. Now this could be regarded as a case of form 18 A being converted into form 18 the date will remain the same as of the date of filing.

Now, once the request is filed and assume that the request is in order the applicant is entitled for the status of a startup the controller feels that the applicant is entitled to claim the status of a startup sub rule 5 then states that the controller shall refer the request for expedited an examination along with the application specification and other documents to the examiner the process is same just as it was in 24 B in respect of the application where the request for expedited examination has been received in the order of filing of such request.

Again this is the same the controller shall refer it to the examiner provided that a request for expedited examination under this rule filed by a startup shall not be merely on the ground that this startup cease to be a startup after having file the application for patent due to the lapse of more than 5 years from the date of its incorporation or registration or turnover subsequently cross the financial threshold limit as defined. Assume that a startup makes an application in its fourth year fourth year of its incorporation and it is a financial are valve within the limit it does not exceeded 25 crores.

So, let us say the startup after four years of incorporation makes an application and yes. Let us also assume that the startup has a turnover of around 20 crores. Now once the application proceeds a request for expedited examination is filed; in the next one year by the time the application is taken up for examination the startup has already cross the 5 year threshold its.

Now in its 6th year or the turnover has gone beyond 25 crores. Now that technically would make the startup lose its status, but if a request for examination is filed while it was a startup that request will proceed as though the startup still enjoys its status it

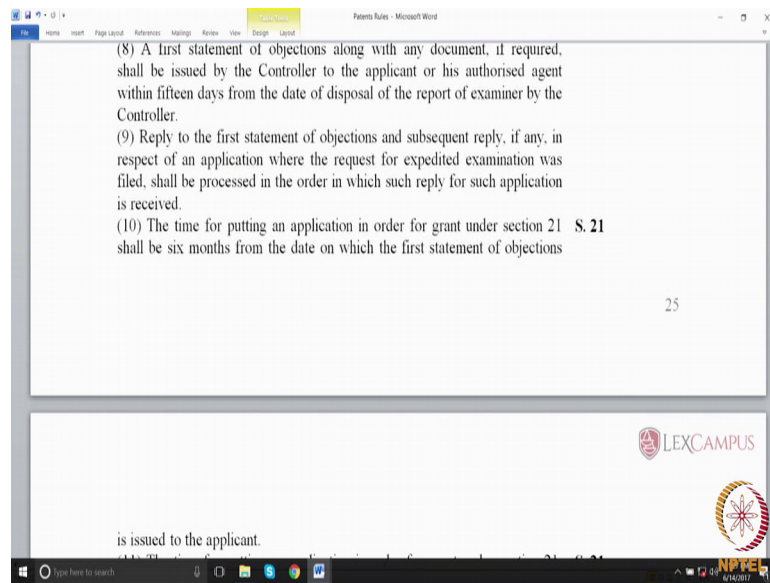
merely states that if a request for expedited examination is made what is relevant is the point at which the request is made if a startup is entitled to the status of a startup at the point in which the request is made subsequent change in status by crossing the 5 year threshold or the 25 crore threshold will not affect the request that was made it will still proceed as an expedited request

So, the request filed by a startup. So, what is the controller would investigate or would look at is the date on which the request was made the date on which the request was made if the startup filed within the definition of a startup that is all that matters subsequently as the application gets examined if the startup loses its status that should not be a ground for questioning the status of the startup sub rule 6 states that- once the reference is made to the examiner the period within which the examiner shall make the report under subsection 2 of 12 shall ordinarily be one month, but not exceeding 2 months from the date of reference of the application to him by the controller.

We saw that in rule 24 B it was one month not exceeding 3 months. So, in this case they have cut down by another month. So, it is one month, but not exceeding 2 months, so, the examiner has a maximum of 2 months to give the report, whereas in 24 B he has 3 months sub rule 7 states that the period within which the controller shall dispose of the report of the examiner shall be one month from the date of received of such report by the controller this remains the same in 24 B and 24 C sub rule eight states that a first statement of objections along with any document if required shall be issued by the controller to the applicant or his authorized agent within 15 days from the date of disposal of the report of the examiner by the controller.

Now, in 24 B that was one month that is now been reduced to 15 days. So, so there is a difference here the controllers report that is the first statement of objections which was earlier call the first examination report shall be sent within 15 days from the date of disposal of the report of the examiner in a normal examination it is one month.

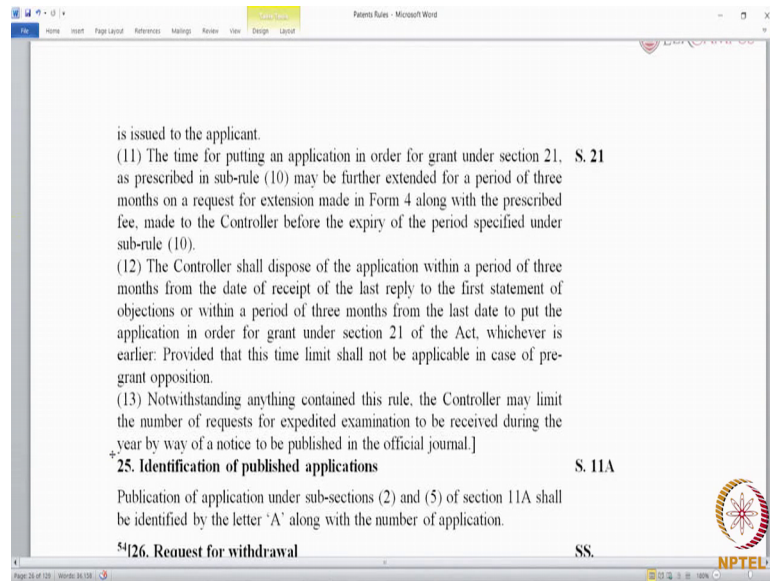
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Now that is been cut down to 15 days sub rule 9 reply to the first statement of objections and subsequent reply if any in respect of an application where the request for expedited examination was filed shall be processed in the order in which such reply for such application is received.

This is similar to what we had seen in 24 B it the process for the order in which the request shall be processed will be the order in which the office receives them sub rule 10 states that time for putting an application in order for grant under section 21 shall be 6 months from the date on which the first statement of objections is issued to the applicant

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This is again there is a similar provision the it says that it should be 6 months from the date on which the first statement of objections is issued to the applicant this is the same in 24 B the 6 month period is the same.

Sub rule eleven the time for putting an application in order for grant under section 21 as prescribed in sub rule 10 may be further extended for a period of 3 months on the request for extension made in form four along with the prescribed fee made by made to the controller before the expiry of the periods prescribed under sub rule 10. So, before the 6 month period expires you can make a request for extension of time by filing form four and you will be granted a further period of 3 months. So, the 6 plus 3 formula that we saw in 24 B also applies here sub rule 12 is important it Is important for us to understand 24 B itself because this throws light on a timeline which is not there in 24 B. So, we will look at this and we will go back to 24 B.

Sub rule 12 states that the controller shall dispose of the application within a period of 3 months from the date of received of last reply to the first statement of objection or within a period of 3 months from the last date to put the application in order for grant under section 21 of the act whichever is earlier provided that this time limit shall not be applicable in the case of pre grant opposition. Now this statement is not there in 24 B sub rule 12 can be seen as the part which closes a loop a loop if it is an open ended loop then there is a possibility that you could say that time can be extended, but in an expedited

examination the controller shall dispose the application within a period of 3 months from the date of received of the last reply to the first statement of objection.

Now, this statement is simply not there that there can be a last reply to the first statement of objection is not there in 24 B and there is no timeline in 24 B which mandates the controller to dispose the application within 3 months. So, that is its where the sub rule 12 becomes important for us in understanding the timeline in 24 B; 24 B which is the case of a normal request for examination being filed there is no mandate to dispose the application within 3 months from the receipt of the last reply whereas, in an expedited examination the controller has been given that mandate.

Either it is 3 months from the date of receipt for the last reply or within a period of 3 months from the last date to put the application in order for grant under section 21 of the act. So, within 3 months from the last date to put the application in order the controller has to dispose the application again this provision to completely dispose the application is not there in rule 24 B it also factors the fact that if a pre grant opposition is filed then the controller cannot dispose the application till the pre grant opposition is disposed off.

So, this timeline will not apply or you may not be able to get an expedited examination done if there is a pending pre grant opposition. So, you could say that one way an expedited examination can be frustrated is when a pre grant opposition is filed, because then the time line need not be an expedited timeline because the controller will be bound to dispose the pre grant opposition before the application is disposed.

Sub rule 13 states that notwithstanding anything contained in this rule the controller may limit the number of request for expedited examination to be received during the year by way of notice to be published in the official journal. Now the controller can make a statement in the official journal that in any given year they will be receiving only x number of expedited applications. So, anything that goes beyond that the controller can say will be treated as an ordinary request for examination.

Now, this is again to check the workload of the patent office. So, the patent office should not be burdened with a more stringent timeline and as you saw in sub rule 12 the controller has to dispose the application within 3 months. So, if it is an expedited examination to prevent the patent office from managing workload which would happen if

the numbers of expedited examinations are increased. There is a limit that the controller can put on the number of request that could be made every year.