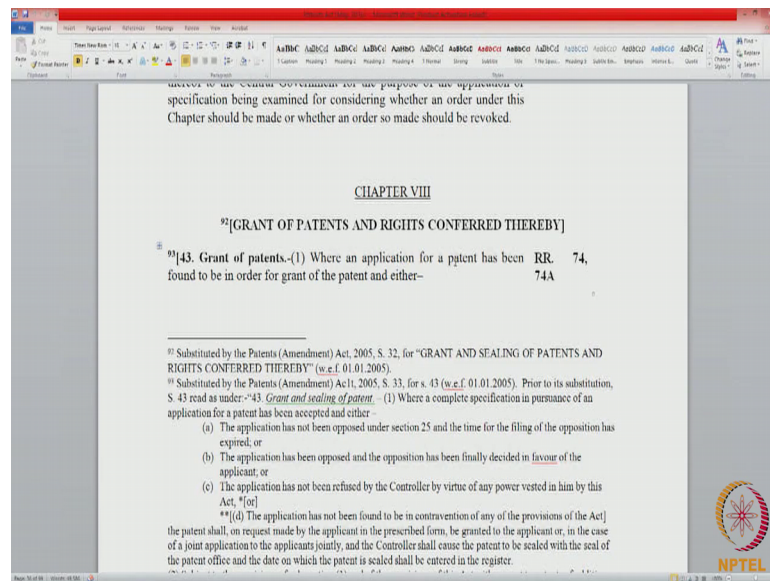


**Patent Law for Engineers and Scientists**  
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**Lecture - 47**  
**Patent Prosecution: Practice at the Patent Office**  
**Grant of Patents**

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Section 43; grant of patents; so, far we have seen what happens to a patent application once it is filed by an applicant the various stages of prosecution there is publication there is examination of the application there is also a new type of examination expedited examination and we saw the stages in examination the controller allots the file to an examiner the examiner files is report to the controller which has to be confidential based on the report the controller issues the first statement of objection to the applicant.

The applicant if it is require justifies or tries to get over the objections trace by the controller which can happen for some time and it eventually resells in the grant of a patent or the controller may under section fourteen called for a hearing if there is an adverse finding given by the examiner and he can also have a hearing under section 15 where he may either refuse the application. If he finds that the patent need not be granted he can have a proceeding under section 15 wherein he may refuse the application amend the application or and grant the application once they objections are corrected. So, the

grant of the patent is the point at which the application becomes an enforceable right till the grant of the patent the patent is not enforceable the person will not be able to file a patent infringement suit till the grant.

And the grant is the proof of a right the fact that the applicant is now entitled to a patent right and is entitled to exercise his rights that are guaranteed under section 48 they all start with the grant he cannot exercise any of his rights that is to exclude people from making using selling offering for sale and importing the invention before the grant. So, the grant is a point at which the rights accrue in a patentee we saw there are certain instances where applicant will have rights like that of a granted patentee he saw that under section 11 a 7 there are certain instances where some rights an applicants will have even before the grant.

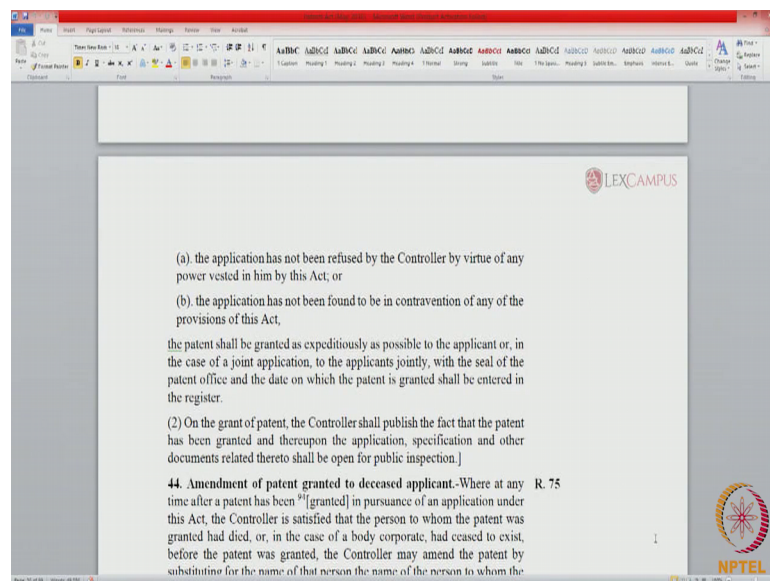
And we also saw instances where the patent is made ready for a grant, but the secrecy direction is issued again the applicant though a patent has not been granted can expect some benefit from the central government say in the form of a solatium as though a patent has been granted. So, there are some deeming provision where even before the grant the applicant can enjoys it certain rights asses of patent has been granted, but largely the rights of a patentee accrues on him only at the point of grant.

So, section 43 is important for us to understand the scheme of things because 43 is the point of a grant; grant happens under 43, but it may happen under different provisions see if there is an opposition file under section 25 1 the applicant gets over the opposition it is granted as soon as the opposition is it is next. So, a 25 1 proceeding could lead to a grant the controller calls for us hearing under section 25 under section 15 the controller raise a certain objections the applicant gets over the objections the controller may suggest some amendment the applicant amends the patent and it gets granted. So, they could be a grant pursuant to section 15, they could be a grant pursuant to proceeding under section 25 1 pre grant of opposition still the grant happens under 43.

So, the grant of a patent regardless of under pursuant to which proceeding the grant happens the power to grant happens under section 43 where an application for a patent has been found to be in order for grant. So, this is the word you will find this language appearing in various provisions. So, in various provisions of the act and the rules you will find that the status of an application that it is made ready for a grant or it is found to

be in order for a grant appears in various provision this is only to say that the application has no other objection, but it is ready for a patent to be granted we just saw in section 37 section 37 2 states that where a complete specification file in pursuance of an application for a patent for invention and respect of which directions have been given under section 35 this found to be in order for grant of a patent. So, this fraise appears in many places is the act.

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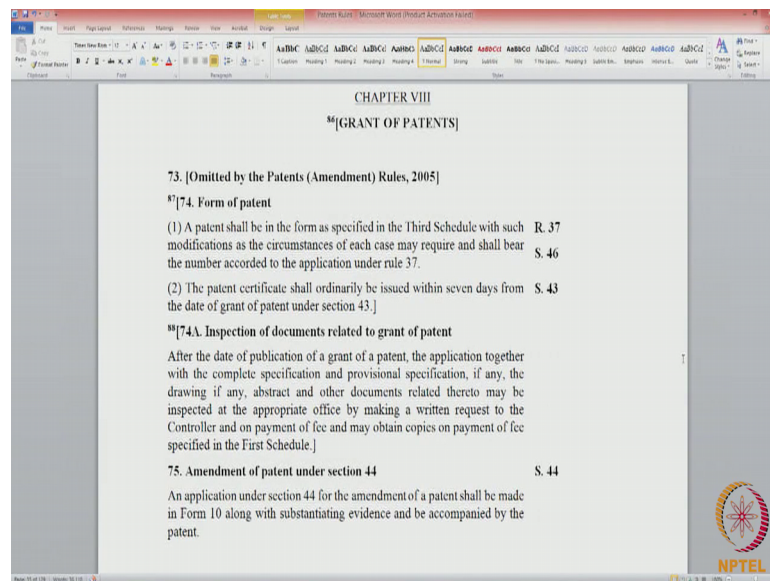
So, it is found to be an order for a grant and either the application as not been refused by the controller by virtue of any power vested in him by this act for instants it he has not refused it under section 15 or he has not refused it pursuant to provision proceeding under section 25 1. So, the controller has not refused or the application as not been found to be in contravention of any of the provision of this act it is not found to be in contravention of section 2 1 j its not found to be in contravention of a section 10 it is not found to be in contravention of any other provisions of the act. Then the patent shall be granted as expidetiially as possible the patent shall be granted as expeditiously as possible to the applicant or in the case of a joint application to the applicants jointly with the seal of the patent office and the date on which the patent as granted shall be entered in the registered.

Subsection 2 says that on the grant of the patent the controller shall published the fact that the patent has been granted and thereupon the application specification and other

documents shall be open for public inspection. So, this is the second publication we already mentioned that an application gets published early in its life and only after their application is published is it taken for an examination. So, publication you saw that in a normal case it is a precondition for examination this is the second publication after the grant the controller has to publish the fact that the application has been granted there is an entry in the official journal saying that all the grant numbers will be there in that particular week.

The applicants name and the details of the invention will be there to see that the patent has been granted to such and such person this has to be published once it is published the application specification and other documents will be open for public inspection they become public records upon publication of a grant the documents pertaining to the patent the application this specification and other documents will be open for public inspection few rules that are relevant here form of a patent we.

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The patent is granted in a particular form the form is contained in the third schedule 74 one a patent shall be in the form as specified in the third schedule this is actually the certificate in which a patent is granted.

So, common form what we call the form of a patent which such modification as the circumstances of each case may require and shall bear the number accorded to the application under rule 37, now rule 37 provides for sequential numbering of patents as

an when they are granted by the patent office we are already seen that. So, we mentioned that in rule 37 we have still following them numbering which started under the nineteen eleven act we had already mentioned that. So, rule 37 follows the sequential numbering.

So, the patents that have been granted will bear a sequential numbering 2 the patent certificate share ordinarily be issued within seven days from the date of the grant under section 43. So, the patent certificate is nothing, but form of a patent mention in the third schedule. So, the third schedule when it is filled with the details of the application becomes the patent certificate. So, the patent certificate is a certificate that is issued to the patentee after the grant based on the form of a patent which is the document in the third schedule third scheduled has only one form they it is not actually a form the third schedule is the form of a patent.

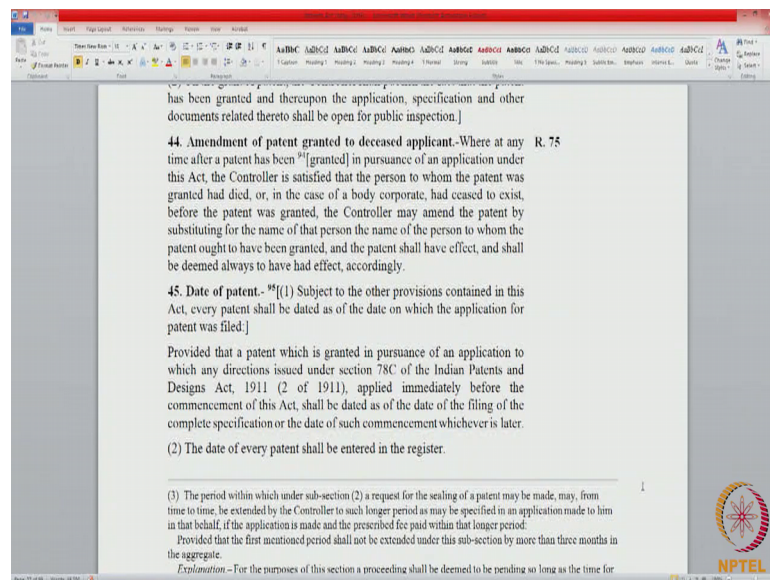
So, it is in that form the certificate is issued you can look at the wording it is that form the certificate is issued 74 a; we had just seen that once the grant is published the documents become available to the public its open for public scrutiny inspection of document is related to grant of a patent after the date of publication of a grant the application to with a with complete specification and provisional specification if any the drawing if any abstract and other documents related thereto may be inspected at the appropriate office by making a written request to the controller and on payment of fee and may obtain copies on payment of fee specified in first schedule.

So, it becomes open now this provisions mentions appropriate office, but now with e filing he should be able to get a copy from any of the patent office because e filing there is a centralized processing that is happening now and earlier application where known by the appropriate of his designations CHE for Chennai, MUM for Mumbai, DEL for Delhi though that is now gone. So, they have a common numbering if you fill in if they patents are filed through e-filing the rates are not only cheaper it also allows a common system and the we can see the there is a trend that it will soon move towards as centralized prosecution mechanism and the fact that the patent office now allows video conferencing will get to show that you could file a patent anywhere in India you need not be where the patent offices and you can also prosecuted because now you prosecution will be through by way of call conference or by video conferencing because that is now a part of the new amendment where in you can.

So, all these tells us that the patent filing and prosecution they entire process of filing and prosecution can be done online without physically being presented even hearing can be done the hearing can now be a Skype hearing it is quite popsicle because video conferencing is something that has been introduce recently 43 again coming back to its for a moment earlier there was a concealing of a patent that once patent is granted the controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered into the register this was an old English tradition the patent office if you look at the amendment to the act this was introduced in 2005. So, before 2005 if we have exist to the wording of the section before 2005 you will find that this was called grant and sealing of patent.

Now, it is only called grant of patents earlier it was called grant and sealing of patent. So, sealing was putting the patent office seal and the date of sealing was entered into the register now sealing is completely removed though the words sealing still appears in the chapter on compulsory license the sealing is removed and what is entered is the date on which it is granted shall be entered in the register. So, the date on which it is granted is entered now the date on which it is sealed.

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So, its sealing has been removed; which is no longer relevant section 44 amendment of patent granted to deceased applicant where at any time after a patent has been granted in

pursuance of an application under this act the controller satisfied that the person to whom the patent was granted has died.

Or in the case of a body cooperate it has ceased to exist before the patent was granted the controller may amend the patent by substituting the name of a person the name of a person to whom the patent ought to have been granted. And the patent shall have the effect and shall be deemed always to have the effect accordingly when a person dies the patents act has a provision by which the successes of that person can be included has the patentee now this is done by an amendment because the patent has already been granted and you are making a change to the person who is the applicant now there is a change in the status of the applicant

Now this can happen if it is in individual then the person who inherits from that person the successes will be shown as the new patentee if it is a body cooperate if it is a company which has cease to exist it is gone out of business it become bankrupt or it is merged into a new entity the patent will continue in the name of the person who is entitle to the interest of that company. Now 44 the relevant rule is rule 75 the application under section 44 for the amendment of a patent shall be made in form 10 with substantiating evidence and be accompanied by the patent. So, you look at form 10 form 10 is for the amendment of a patent now while filing form 10 you will have to also filed documents as to how you are claiming an interest in the patent.

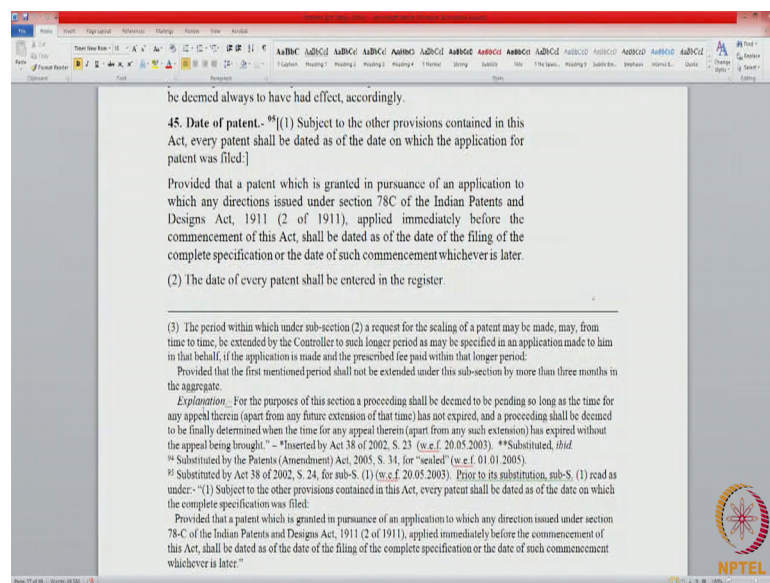
So, some evidences required substantiating evidence which has to be filed along with the form 10. Now the point to note here is when you amend the name of an applicant who has passed away then the amendment is using form 10 if you generally amend the complete specification then you will use form 13. So, the title of both the forms are application for amendment of a patent, but form 10 is used when there is a death or when the body cooperate ceases to exist where as for any amendment generally you need to amend the claim or you need to amend some parts of this specification you will use form 13 form 13 is the one which will use for amendment under section 57.

So, though both these forms are titled similarly both of them are titled application for amendment of patent the form 13 is title application for amend of application for patent. So, very similarly titled, but form 10 is used where the person to whom the patent has been granted the patentee has died or the patentee has cease to exist it was a body

cooperate it a seize. So, there is a death or there is a the legal entity has seize to exist only in those cases will you use form 10 in every other amendment of the complete specification you will be using form 13 date of a patent section 45 states that subject to other provisions contained in the act every patent shall be dated as of the date on which the application for the patent was filed.

So, date of the patent under the patents act is the date on which the patent application was filed provided that the patent which is granted in pursuance of an application to which such directions issued under section 78 c of the Indian patents act patents and designs act nineteen eleven applied immediately before the commencement of this act shall be dated as of the date of the filing of the complete specification or the date of such commencement whichever is later. So, for a patent filed under the 1970 act the date of the patent is understood as the date of filing the application.

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But for any directions issued under section 78 of the nineteen eleven act applied immediately before the commencement of this act that is a 1970 act shall be dated as of the date of the filing of the complete specification of the date of the commencement whichever is later.

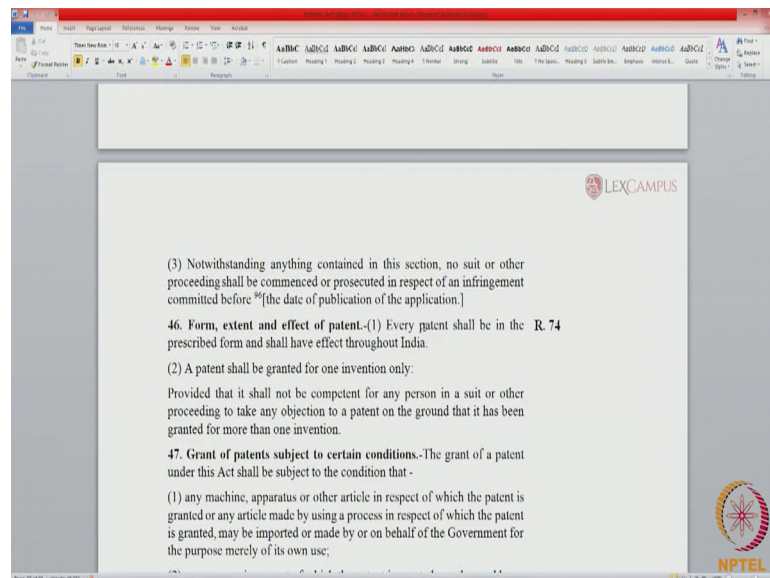
So, we understand that there are certain directions that can be issued under the section under section 78 c of the patents act nineteen eleven we call the patents and designs act as the patents act nineteen eleven now the date of the patent in those cases will be the



date of filing the complete specification or the date of the commencement which our is earlier. So, the commencement refers to commencement of the 1970 act the 1970 act came into force sometime in 1972. So, the date of a patent for an application filed under the nineteen eleven act which continue till 1972 then the date of the patent will be the date of commencement of that act or the date of filing of the complete specification this is for us to understand that in cases before the 1970 act came into effect the date of the patent cannot be the date of filing of the application.

In such cases we look at the date of filing the complete specification or date of commencement of the new act whichever was later. So, this proviso is not no longer relevant because we do not have any instance which will fall under this the date of every patent shall be entered in the register now we saw that the date of a patent is the date on which the application was filed the filing date that shall be entered in the register notwithstanding anything contained in the section no suit or other proceeding shall be commenced or prosecuted in respect of infringement committed before the date of publication of the application.

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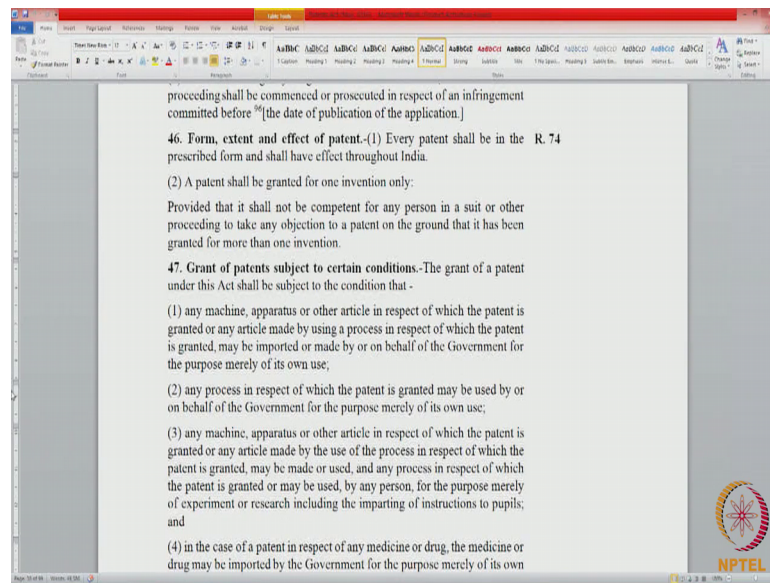
Now we saw that you can file an infringement suit soon after the patent is granted because you need to show the patent certificate for filing a infringement suit.

Now, you could file for axe of infringement committed before the date of grant, but after the date of publication because anything done before the date of publication the person

who committed that infringing action can take a plea that I did not know anything about the existence of the patent. So, that is a defense for a person to say that I did not know the patent existed because notice of the patent comes to the public only on publication. So, those acts which are infringed before the date of publication cannot be the cost for grievance that is what three tells us that anything contained no suit or other proceeding shall be commenced or prosecuted in respect of infringement committed before the date of publication of application. So, though your date of patent is from the date of filing the application between the date of patent and the date of publication of the application the acts done by a person they will not amount to infringement.

So, the date of patent is the date on which the application is filed from there the first publication happens what we call the time for publication of application  $t_p$  a the date of patent till TPA any act committed by an infringer will not amount to infringement. So, from the date of publication you could ask for damages if a person commits infringement if he is put on notice and if he continues with the infringement from the date of publication of the application you could ask for damages, but you will only ask for damages when you file an infringement suit which will be at the time of grant. So, because patent law goes back in time to grant certain rights and privileges the ability of a person to file an infringement suit comes only at the point of grant, but at the point of grant he could file for acts done by the infringer after the patent application was published because only then you can say that they infringer had some kind of a notice any act done before the publication application cannot amount to infringement.

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Section 46 form extent and effect of patent every patent shall be in the form prescribed and shall have effect throughout India.

Now, rule 74 gives us the form of a patent we have already seen that that is third schedule 46 2 the patent shall be granted for one invention only if we had seen that if there are more than one invention the controller can ask the applicant to file a divisional under section 16 provided that it shall not be competent for a person and a suit or other proceeding to take an objection to a patent on a ground that it has been granted for more than one invention now in any proceeding either before a controller or before a high court you cannot raise an objection that the application or the patent has 2 inventions because it something that can be corrected at any time the controller will ask the invention to be split into 2 different application. So, that cannot be a ground for objection.

See you cannot ask for a revocation of a patent or you cannot say that I am not infringing because this application is too invention that cannot be a ground for objection it is a procedural thing it can be rectified and that cannot be a ground for objection in any case.