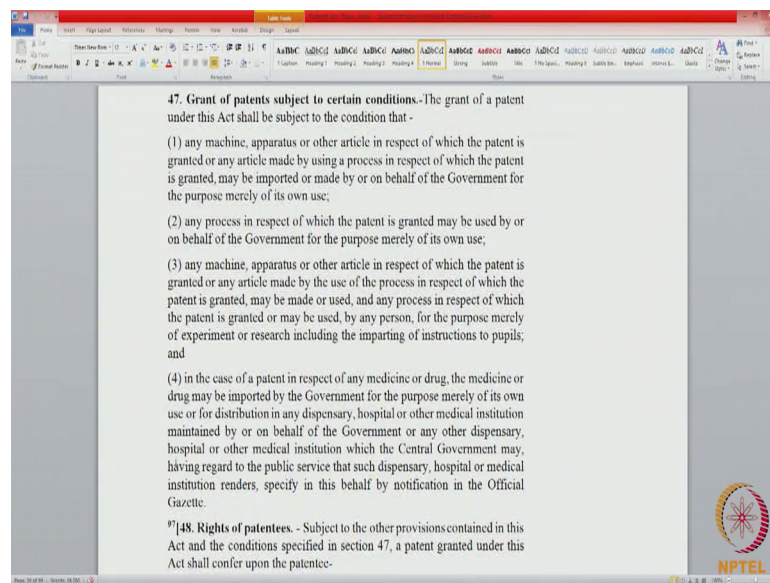


Patent Law for Engineers and Scientists
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Lecture - 48
Patent Prosecution: Practice at the Patent Office
Rights Conferred by Grant

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47 grant of patent subject to certain conditions, the grant of a patent is subject to certain conditions the conditions are mentioned in 1, 2, 3 and 4 of section 47. Now in the case of any machine apparatus or other article in respect of the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made on or behalf of the government for the purpose nearly of it is own use.

So, the government has the power to import or make either by itself or on it is behalf for it is own use. If there is an invention and the government wants to use it a patent can be done the government can use it and that is a condition on which a patent is granted patent is granted to any patent in India on the condition that is a government wants to use it you cannot stop the government.

Two any process in respect of which the patent is granted may be used by or on behalf of the government for the purpose nearly of it is own use, one and two pertain to products and processes one talks about products product patterns where as two separately talks

about processes. Three any machine apparatus or other article in respect of which the patent is granted or any article made by use of the process in respect of which the patent is granted, maybe made or used and any process in respect of which the patent is granted may be made or used by any person. Now this generally covers any product protected by a patent or any process protected by a patent for the purposes merely of experiment or research including imparting of instructions to pupils.

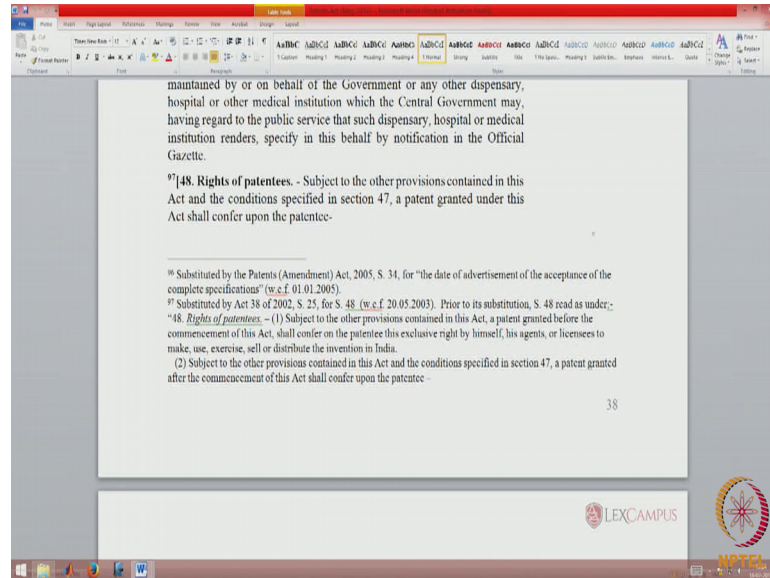
So, if patented product or a patented process is used for experiment or research which includes imparting instructions to students that is a condition subject to which patents are granted. So, patents are granted so that students can be instructed and thought and experiments can be conducted on that field of technology, and as long as the activity pertains to experiment and research and imparting instructions to students, then that is a condition on which the patent is granted.

Meaning which by doing that you cannot claim that there is infringement or it cannot be a cause for complaint by the patentee four in the case of a patent in respect of medicine or drug the medicine or drug may be imported by the government for purposes merely of its own use of a distribution in any dispensary hospital or other medical institution maintained on our behalf of the government, or any other dispensary hospital or other medical institution which the government may have regard to public service that such dispensary hospital or medical institution renders specify in this behalf by notification in official gazette.

Now, this allows patented products to be imported for government use, either in government hospitals dispensary or medical institutions are those institutions private institutions dispensary hospital or medical institution which the government notifies. Now this is to cover instances where there is a break of an epidemic there is a disease which affects hundreds and thousands of people if the government wants to tackle that epidemic like a viral fever bird flu avian flu or swine flu in the government can import medicines and it can start giving out medicines to its citizens regardless of whether it is a private institution or a government hospital in the case of private hospitals the government needs to make a notification saying that in the light of health emergency these drugs will be available though they are patented will be available for.

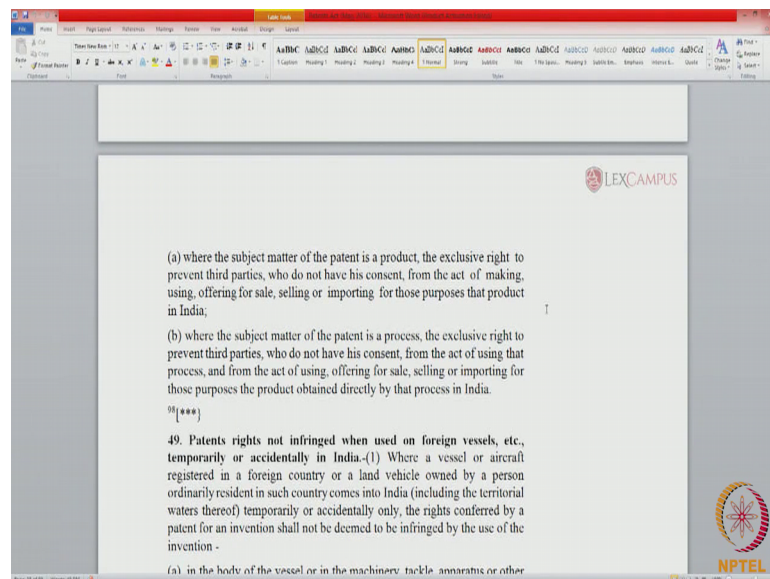
So, that is again a condition on which the patent is granted which means if the government does this they cannot be a cause for complaint by the patentee.

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48 rights of a patentee; subject to other provisions contained in this act the condition specified in section 47 we saw that a patent is granted based on certain conditions, that it can be used for research it can be used for instructing pupils, it can be used for in hospitals, it can be used for by the government. These are the conditions on which by which a patent is granted.

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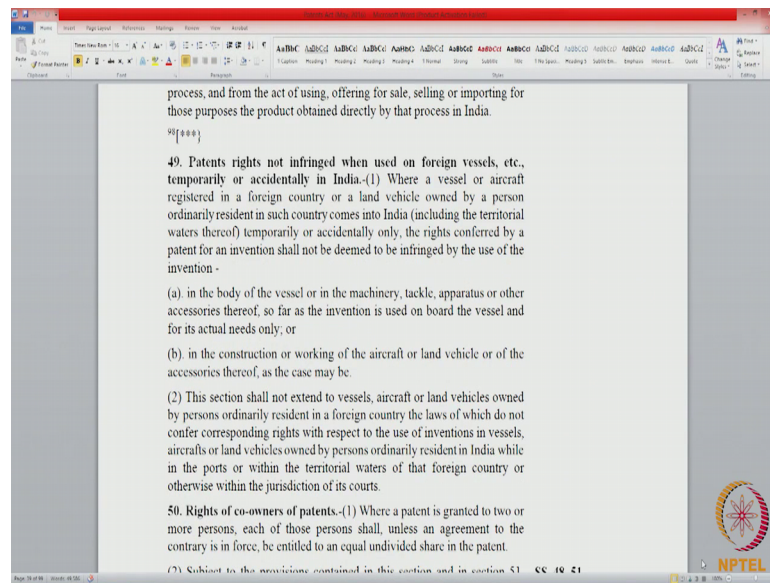
So, subject to those conditions a patent granted under this act shall confer on the patentee there are two sets of right a deals with rights with regard to a patented product and b rights with regard to a patented process. Now what are these rights that the patentee has the exclusive right to prevent third parties?

Now, this is the right granted by a patent, there is an exclusive right to prevent third parties from making using offering for sale selling or importing these are the 5 types of rights, manufacture making using offering for sale which is marketing selling or importing. These 5 rights the patentee has an exclusivity. So, he has an exclusive right to prevent third parties who do not have his consent if they have their consent it is call license.

Now b pertains to the subject matter of a patent is a process they exclusive right to prevent third parties who do not have the consent from the act of using that process and from the act of using offering for sale, selling importing for those purposes the product obtained directly from that process in India. So, use of the process and use offering for sales selling or importing the product obtained by the processes; so it covers also the product that comes through a process.

Now, in this case manufacturing is not mentioned, make is mentioned in the case of products here make is not mention, there is a different provision because it is difficult to prove whether a particular process was used in the making of an product. If there is a process patent it becomes difficult to prove and that is the reason why you have this provision.

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Section 49 patent rights not infringed when used on foreign vessels etcetera temporarily or accidentally in India, this provision deals with instances where an equipment more. So, in the form of a moving vehicle that enters India and it so, happens that one of the components in that equipment or vehicle that comes into India is patented, then just the fact that it came into India and these are understood as vehicles that are in transit or equipment that comes into India in transit, it is not meant to be here it is just for a temporary purpose.

So, in such cases even if the technology in that equipment or in that vehicle is patented, that coming into India and leaving the India when it happens temporarily or accidentally it does not amount to infringement. Now this is the gist of the sub section it covers various types of vehicles like a 49 1 deals with vessels aircraft land vehicle, I know the fundamental premise of this provision is that what happens temporarily or accidentally cannot be the subject matter for an infringement and this is done so, knowing fully well that they will be new technologies that are used in aircrafts and vessels and land vehicles, that could come into India and they could be a cause for infringement, but because they do not stay in India and they are not if you could see that commercially exploited in India like there is no act of use a selling there is no act of offering for sale, in and there is no act of manufacture it can be presumed that these acts are temporary and because they are temporary in nature, they cannot be a ground for internal action

49 1 states that where a vessel or aircraft register in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India temporarily or accidentally only now comes into India, India includes a territorial waters also. In when we mention India here it includes the land and also the territorial waters the sea surrounding the land to a particular extent is what we call the territorial waters the rights conferred by a patent for an invention shall not be deemed to be infringed by use of the invention. So, if a vessel an aircraft or a land vehicle which is owned by a foreigner owned by a person ordinarily resident in a foreign country, comes into India and it happens that the coming into India is temporary or it is accidental then the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of that invention.

Now, assume that when the aircrafts comes into India, there is a patent over a technology which forms a part of that aircraft and that aircraft has a patent which is granted by the Indian patent office. Technically the arrival of the aircraft into the Indian land would amount to infringement, because there is an existing patent covering that piece of technology and the Indian patent office as granted a patent.

Now we want to exclude instances where one it is hard to detect infringement or the act of infringement is not a continuing at it is a just a stray act or it is just happen for a few hours or it becomes difficult for us or rather it causes inconvenience for us to do international travel and international trade, because it will be very hard for us to be in a situation where we start in forcing rights, which could affect the way in which we communicate and the way in which we travel.

Now, let us look what are the instances a in the body of a vessel or in a missionary tackle apparatus or other accessories thereof so for as the invention is used on board the vessel and for it is actually needs only. So, it is in the body of the vessel or missionary tackle apparatus or accessory and the invention is used on board the vessel and for it is actual needs. So, it is a part of the vessel, b in the construction or working of aircraft or land vehicle or of accessories thereof as the case may be. So, in the case of vessel it should be a missionary or something which is a part of the vessel which can be the technology should be something which is actually used for the actual needs of the vessel, in case of aircraft and land vehicle what is used in the construction or working of the aircraft or the land vehicle and of the accessories thereof.

Two this section shall not extend to vessels aircrafts or land vehicles owned by persons ordinarily resident in a foreign country, the laws of which do not confer corresponding rights with respect to use of invention in vessels aircrafts and land vehicles, owned by persons ordinarily resident in India, while in ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of it courts. Now this 49 2 incorporates the principle of reciprocity. India would normally honored rights of a foreign country, which honors rights of Indians in that country. So, this is the principle of reciprocity.

So, if that foreign country of a similar rights for Indians when they travel with their vessels aircrafts and or land vehicles, then India would extend similar privilege for foreigners who would come into India using vessels aircrafts and land vehicles. So, this incorporates the principle of reciprocity which is a principal in a international law.