

ROADMAP FOR PATENT CREATION

INDUSTRIAL APPLICATION

LECTURE 10

A very warm welcome in the fifth module of the week 2 of the Course, roadmap for patent creation, titled "industrial application"

In the earlier module we have seen the non obviousness aspect. In that we have noted that invention should be non- obvious if it has to be considered for patent granting... we have also checked the terminology phosita. Now we will concentrate on the third criterion for patent that is industrial application the title industrial application clearly indicates it is "application in the industry"Fine...so the invention must have industrial utility So as per the term it is correct that " industrial application" is application of invention in industry...Whether law says same thing? Let us check that

So how patent Act defines the term ..industrial application section 2 (1) (ac) of the Indian Patents Act, 1970 defines "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry; So generally from this definition we understand that Invention must have practical utility Historical justification of the industrial applicability is to assure society receives a positive benefit Now as per Act we will check the definition. We know the definition of invention and inventive step so first step anyone have to do is to consider these two definitions and check if the invention under consideration follows these two definitions...then as per above mentioned definition next step is to check if the invention under consideration follows industrial applicable definition

The term 'industrial application' was introduced in the Patents Act through the amendment in 2002. It says - invention is capable of being made or used in an industry In *Lakhatpati Rai & Ors. Vs. Srikissen Dass & Ors. (1917)*, it was held that 'utility' does not mean improvement. It means practicability. We will see now further details Let us check first what is the meaning of industry As per investopedia, industry is a group of companies that are related based on their primary [business activities](#). "Industry" should be understood in its broad sense -as including any useful and practical, and -as distinct from intellectual or aesthetic activity.

Now the question is What can be considered as Industrially applicable So the important is invention must possess utility for the grant of patent No patent can be granted for an invention devoid of utility Many times when invention is related to Methods of testing then in such case the industrial applicability will be judged as

- Applicable to the improvement or control of a
 - product,
 - Apparatus or
 - process

but then important is to indicate the purpose of the test Let us try to understand this Methods of testing are generally regarded as capable of industrial application In

such cases there will be improvement So it says Methods of testing and applicable to improvement So this Improvement is in what? It may be in a product, apparatus or process which itself is capable of industrial application. So something is already existing and that is improved... In such cases it is suggested to indicate the purpose of the test

In such cases the contribution by the inventor is to make the product, apparatus or process better than the existing So to summarise this aspect, the purpose should be clearly mentioned in the draft of the patent that is mention why that particular test is required because this will give the understanding of the industrial applicability of the invention

There are certain things which do not qualify this test of industrial applicability... which are these scenarios Let us check out So first ... Practical application must be distinct mere intellectual input resulting into some out put is not satisfying the criteria of industrial applicability We will see an example to understand this ... Practical and useful and intellectual efforts or intellectual input So suppose an inventor invents that lining of gold in pipes is useful to avoid the conversion of water into ice So gold lining or plating is to be done to avoid the conversion of water into ice Thus use of gold solves the issue of breaking of pipes in winter season due to ice formation so the inventor solves the issue the problem but whether it is practical? Offcourse not So if solution is not practical one can not consider it for patent granting

Similarly the aesthetic aspect Inventor have developed some product he had then put his efforts to make that product more attractive....with investment of months time the product which was looking very simple now looks very attractive..... .the change made is that the same product looks very attractive...due this the business also increasedso can we consider the efforts of inventor to provide aesthetic value...the answer is no for patent, practical application is important ...if that aesthetic input is not giving any of this then that invention can not be considered for patent granting thus mere intellectual efforts...and mere aesthetic inputs does not satisfy industrial applicability criteria

Next scenario the vague and speculative indication The purpose of granting a patent is not to reserve an unexplored field of research for an applicant. let us consider the example some inventor is working on the project ...he has defined his objectives and now achieved success to complete the first two objectives....now he is till working on other objectives.....however he projected and thought that other than five objectives on which he/she is working a few more issues can be resolved in future....he has not given solution but predicted the outcome.....so it is vague and speculative indication.....if he/she claims that vague and speculative indication in the patent draft then that will not be acceptable and that will not be granted....such claims will be removed and such patent will be granted after necessary amendments only.

Let us check this example from life sciences domain Inventor claims **Novel PTP20, PCP-2, BDP1, CLK and SIRP proteins and related products** Invention discloses the description of proteins, structural features [amino acid sequences] and their enzymatic activities. **Novel PTP20, PCP-2, BDP1, CLK and SIRP proteins and related products invention** In the patent draft the example of BDP1 polypeptide is explained. The amino acid sequence for BDP1 polypeptide was given as SEQ ID NO 3 in the description The said polypeptide is found to be associated with tyrosine phosphatase activity.

Detailed description about method and means for making BDP1 polypeptide by DNA techniques are also described. The hypothesis is made that BDP1 polypeptide may have some role in cellular housekeeping and in certain types of cancers. It is speculated that BDP1 polypeptide could be “made & used” as a further tool, for exploring the complex cellular signal transduction pathways. How to use this and what is the process or method is not shared in the draft. Thus no industrial applicability could be derived from the description. Then next scenario: Sometimes inventors claim Processes or products which are clearly contrary to well-established physical laws such claims can not be accepted.

In Paez's Application it was claimed by the inventor to produce “new hydrogen species”. The hydrogen species described in the applications involves the electron existing in a lower energy state than the lowest possible energy state recognised in standard physics. Hence such claim by inventor will be rejected and does not qualify for the patent granting. It is also clearly mentioned in the Act that any invention related to method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body shall not be taken to be capable of industrial application.

The next one is regarding the Parts /pieces of the human or animal body to be used in transplants. These are objected as not being capable of industrial application. Thus

1. mere Intellectual activity
 2. mere Aesthetic activity
 3. Vague and speculative indication
 4. Contrary to well-established physical laws
 5. Method of treatment of the human or animal body and
 6. usage of Parts /pieces of the human or animal body in transplant
- disqualifies industrial applicability

Let us now quickly go through the landmark judgements related to this aspect of industrial applicability to get more clarity on this aspect. In ***Chiron Corp v Murex Diagnostics Ltd and others [1996] RPC 535 (page 607)*** It was held that the requirement that the invention can be made or used “in any kind of industry” so as to be “capable of industrial application” carries the connotation of trade or manufacture in its widest sense and whether or not for profit and, further, that no industry exists in that sense to make or use that which is useless for any known purpose. ***In The High Court of Australia in NRDC's Application [1961] RPC 134*** It was stated that there must be a product, but this need not be an article or substance, but must be something in which a new and useful effect, be it creation or alteration, may be observed. It may, for example, be a building, a tract or stratum of land, an electrical oscillation, but it must be useful in practical affairs.

A method of eradicating weeds was held to give rise to product (an improved crop) because this was an artificially created state affairs; moreover it was one whose significance was economic. ***In John Lahiri Khan's Application (BL O/356/06)***

It is clarified that a method for effecting introductions with a view to making friends was held not to be industrially applicable, even though it could be carried out by a commercial enterprise. It was also found to be excluded as a method of doing business. This is very important to understand ..many inventors especially students develops various mobile apps and they feel that it should be patented....but as per law if are not giving industrial applicability then that will not be considered for granting of patent ***In Eastman Kodak Co. v American Photo Booths Inc. (BLO/457/02)***it was held that the folded optical path as described and claimed could not give rise to the claimed narrowing of the depth of field.

- It was observed that the claim and the actual output are different
- It is observed that the invention lacks both industrial applicability and sufficiency of disclosure .

In the draft there was claim about a “flying gyroscope” , an article of which detailed are not disclosedAs both industrial applicability and sufficiency of disclosure were the issues...the patent is not granted....Thus when we think of industrial applicability then we have to clearly mention the process and the outcome and its use in industry....also you have to check if it is not

1. mere Intellectual activity
2. mere Aesthetic activity
3. Vague and speculative indication
4. Contrary to well-established physical laws
5. Method of treatment of the human or animal body and
6. usage of Parts /pieces of the human or animal body in transplant

I hope now you have clearly understood all three criteria of patentability.With this we come to the end of this session as well end of the second week. The next week is dedicated on “How to read a patent?”See you in the next session

thank you!

