

ROADMAP FOR PATENT CREATION

PATENT TIMELINES-INDIA AND PCT

LECTURE 24

A very warm welcome in the fourth module of week 5 of the Course, roadmap for patent creation, titled "Inventions not patentable in India" You will find so many resources and videos and lectures on it. This is very easy section of the Act with clear guidelines. This section lists the inventions which can not be patented. With the logic you can understand the reasoning behind this section easily. Before we start, I wish you to appreciate the creators or individual who have drafted this section. As a nation if anyone think by empathising himself or herself as common man of the country you will understand the importance of this section. You will also appreciate a patent system in India as how a nice balance is made between the rights of inventor and the society. The balance in public good and private good.

The other or second point I wish you to appreciate before starting this section

Once you go through the list you will understand the restrictions which are put on what can be patented and what cannot be patented. Because of this section again you can appreciate that getting patent in India is difficult than USA. The things which are not patentable in India most of them with a few exceptions can be considered for the grant of patent by US patent office. So I repeat getting patent granted in India is little difficult than USA because section 3 plays major role. Having said that and with this background now we will check the list of inventions which are not patentable So

- inventions which is frivolous, or which claims anything obvious contrary to well established natural laws. So what is the meaning of this We will understand this with example Development of perpetual motion machine If someone claims this as an invention then it is not patentable Or if someone claim that he/she has created a machine where where if you put some vegetable in the machine automatically it will get converted into metal say gold or platinum From vegetable platinum...this is frivolous so if someone claim such inventions then that are not patentable Or in the stories we listen about the stone which when touched to iron it converts iron into gold At least till date no one have discovered or invented this If someone claims that then this is against law However, if any chemistry scientist is successful to convert vegetable into gold or iron into gold just by simple process then that may be very interesting invention However in such case stability criteria among the other criteria that is novelty nonobviousness and industrial application will be very important and the proof So as of today such inventions are frivolous. Next inventions where the primary or intended use or commercial exploitation of that invention could be contrary to public order So any invention which is against the public law is not patentable.

For example Any device, apparatus or machine or method for committing theft/ burglary Offcourse if someone file a patent application for this it will be outright rejected Then if some claim the machine or method for counterfeiting of currency notes Then ...outright rejection If someone claim an invention as the invention will help the user

to cause injury in specific manner to human beings, plants and animals. All such inventions will not be patentable....Then next if the invention is contrary to morality then that will not be granted Also the inventions which may cause serious prejudice to human, animal or plant life or health or to the environment So for example if someone come up with an invention which will help the person to do the effective adulteration which can not be detected by any of scientific process...then off course such invention will not be granted Or if someone develop an invention where it will effectively affect the composition of air as well effectively contaminate the water so that social life in that area will be destroyed in no time All such inventions will not considered for the grant Moving further a mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature is not patentable So mere discoveryWe have seen the difference between discovery and invention in one the modules Do you remember? Yes Just briefly I put the difference here again Discovery is where the individual explores something already existing in nature... And invention is as per definition must have inventive step through which there will be advancement of science and technology Okay so mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature is not patentable So discovery of scientific principle Discovery of abstract theory And discovery of living or nonliving substance So living or nonliving Discovery of micororganisms.....not patentable Discovery of new element if any chemistry scintist do ...not patentable If some discovers new planet not patentable Yes you can give the name as per your wish to that organism e.g. kulkarniella You can name plnet or element But no patent Abstract theory not patentable We have seen in earlier modul this point in much detail...sufficiency of disclosure right... So any adstract thing not patentable Okay so

- Frivolous
- Contrary to well established natural laws.
- Contrary to public order or morality
- Serious prejudice to human, animal or plant life or health or to the environment
- Mere discovery of a scientific principle
- An abstract theory
- Discovery of any living thing or non-living substances occurring in nature

Now next the most important section section 3 d More related to pharma industry or chemical industry This sections says that

- mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy is not patentable what is the meaning of this... mere discovery of new form of known substance and there is no any enhancement of known efficacy in chemistry many times you can create molecules by replacing say halogens

we know there are halogen elements as fluorine (F), chlorine (Cl), bromine (Br), iodine (I), astatine (At), and tennesine (Ts). Mere replacement of this results is

formations of new substance ..many times this may not not change properties substantially so in this case it is not patentable Thus isomers, stereoisomers, homologues salts, esters, ethers, polymorphs, metabolites, mixtures of isomers, complexes, combinations if no enhancement in activity not patentable Then moving further

- mere discovery of any new property or new use for a known substance is not patentable so what is this so some drug is already present in the market and is used for say X purpose now after say five years someone discovers that this same molecule can be used to cure Y problem

so same substance but new use is discovered so this is not patentable in india this is very very very impotent but may be bad news for pharma just imagine if this clause world not have been there....Pharma company could have used evergreening to keep the patent alive so instead of 20 years companies could have used evergreening for next two terms three terms so same molecule could have received the protection for 80 years.... Monopoly///// Okay then it says the mere discovery of new use of a known process, machine or apparatus unless such known process results in a new product So again same thing.....Okay so here we will watch one landmark case Check this Interesting right? Okay

Now next one... a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components So if someone claims the invention where there is just mixture of two or more substances and no any new effect is observed then it is not patentable Also any process if someone claims as a new process for producing such admixture without any substantial effect is not patentable Example- synergistic effect X and B mixing//////// Next section 3f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way; Example a, b, c (h) a method of agriculture or horticulture; Any breeding technique Or anything related to practices/processes followed in agriculture Separate Act: Then next subsection 3i any process for the medicinal, surgical, curative, prophylactic [diagnostic therapeutic] or other treatment of human beings not patentable so if someone creates a method or then any process for medicinal, surgical, curative, prophylactic [diagnostic therapeutic] or other treatment of of animals to render them free of disease or to increase their economic value or that of their products is not patentable.

so in short techniques used in medical field for treatment on human animals are not patentable just I wish to reiterate you can appreciate these clauses and see how the balance is maintained in public welfare and inventor's right ...fine moving further ... section 3 j plants and animals in whole or any part thereof other than micro-organisms seeds, varieties and species and essentially biological processes for production or propagation of plants and animals are not patentable so when you see court cases in patent these are generally around section 3....Mostly big organizations Okay So if it patent section 3 is important and if it is copyright section 52...these two sections in respective IP law are major and important decision making sections..... You can get answers to most of your queries regarding court cases around this two sectionsFine (k) a mathematical or business method or a computer program per se or algorithms;

- (l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- (m) a mere scheme or rule or method of performing mental act or method of playing game;
- (n) a presentation of information;
- (o) topography of integrated circuits;
- (p) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties or traditionally known component or components

With this we come to the end of this session. See you in the next session

thank you!