

# ROADMAP FOR PATENT CREATION

## STATUTORY DIFFERENCES BETWEEN INDIA, EUROPE AND USA

### LECTURE 30

A very warm welcome in the fifth module of week 6 of the Course, roadmap for patent creation, titled "Identification of inventor and applicants and their rights" So to understand this....we will go first through some important sections of the Indian Act...So let us start....

#### **Persons entitled to apply for patent**

The following persons are entitled by law [Patent Act 1970] to apply for a Patent:- [s. 6]

1. A person who is the true and first inventor of the invention.
2. Any person who is assigned by the true and first inventor (assignee), to make an application.
3. A legal representative of the deceased true and first inventor.

Now we know the rule of First-to-file is applicable. You know it What is it it is, the first person to apply for the patent is entitled to get the patent. A prior inventor of the said invention, who files later, will not be entitled to get the patent.

#### **Where to File?**

- There are four patent offices in India which are located in: Delhi, Mumbai, Chennai and Kolkata.
- An inventor can file his application at any of the four locations, based upon the territorial jurisdiction.
- The patent law allows applicant to file application if they have a place of business or residence or domicile in India.
- The applicant must be an Indian National or a national of Convention Country.
- All foreign applicants who do not have a place of business in India are required to file the application through a patent agent.

#### **Grant of Patent & Register of Patent**

A patent shall be granted, if it is found by the Controller, to be in order. [s. 43(1)]

It shall be entered into the register of patents, with the seal of the patent office and the date on which the patent is granted. [s. 43(1)]

On the grant of patent, the Controller will publish the fact that the patent has been granted, and thereupon the application, specification and other documents related thereto shall be open for public inspection. [s. 43(2)]

In order to identify the inventor or applicant, anyone can look into the register of patent, that is under the supervision and control of the Controller. [s. 67]

**Now we will check a few important definitions under the statute [s. 2]**

1. "patent": means a patent for any invention granted under this Act; [s. 2(m)]
2. "invention": means a new product or process involving an inventive step and capable of industrial application; [s. 2(j)]
3. "inventive step": means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art; [s. 2(ja)]
4. "person": includes the Government; [s. 2(s)]
5. "true and first inventor": does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India; [s. 2(y)]
5. "assignee": includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person; [s. 2(ab)]
6. "legal representative": means a person who in law represents the estate of a deceased person; [s. 2(k)]
7. "patentee": means the person for the time being entered on the register as the grantee or proprietor of the patent; [s. 2(p)]

Now we know who is inventor who is applicant and who is inventor "true and first inventor" "patentee" "legal representative" "assignee": "person": Now What are the rights

- **When the subject-matter is a product:**

**The patentee has the**

**exclusive right to prevent third-parties from,**

1. **Making,**
2. **Using,**
3. **Selling,**
4. **Offer for Sale,**
5. **Importing,**

**that product.**

- **When the subject-matter is a process:**

The patentee has the exclusive right to prevent third-parties from:

1. Making
2. Using
3. Selling
4. Offer for Sale
5. Importing

any product obtained from that process. Conclude and video With this we come to the end of this session. In the next session , “Patent-Definition”, we will learn about the definition of patent and the criteria for patenting... See you in the next session

thank you!