

ROAD MAP FOR PATENT CREATION
PATENT-DEFINITION
LECTURE 07

A very warm welcome in the second module of week 2 of the Course, roadmap for patent creation, titled "Patent-Definition"

Till now we have received fair information about IPR its advanced domains, use and importance of patent etc. today we will see what is patent? What is its definition? So definition of patent is an exclusive right granted by the sovereign of the state to the owner of the invention to make, sale, use and manufacture the invention upon complete disclosure of the invention provided the invention satisfies certain criteria stipulated by Law for a limited period So it is an exclusive right granted by whom? Granted by sovereign of the state To whom? to the owner of the invention for what? to make, sale, use and manufacture the invention when? upon complete disclosure of the invention on what condition? provided the invention satisfies certain criteria stipulated by Law for how many years? for a limited period so patent is an

1. exclusive right
2. granted by the sovereign of the state
3. to the owner of the invention
4. to make, sale, use and manufacture the invention
5. upon complete disclosure of the invention
6. provided the invention satisfies certain criteria stipulated by Law
7. for a limited period

So there are 7 important points ...

The first one....

1. patent is an exclusive right What is the meaning of that...Exclusive,this word came before alsoyou remember? Yes,,, In advanced areas we have seen the topic "technology transfer".....right? There we have seen there are two types of licenseswhich are these two types? Yes....exclusive and nonexclusive.... Have you got the chance to google this? So what is exclusiveExclusive is to only a particular person/entity/ group.....

Here patent is an exclusive right...that is right given to applicant ...which is that

right? To exclude others Exclude what exclude the use of the right...Okay so it is the right of exclusion given to the applicant Who is giving this right? So the second point...this right is given by Or granted by the sovereign of the state So what is the meaning of this sovereign of the state... The meaning of this is this right is conferred to applicant by the sovereign of the state...In India this right will be granted by Indian patent office

In USA it will granted by US patent office and so on....thus the right is conferred sovereign of the state Obviously from this you might have realized that this is a territorial right...if India patent office grants this right this right is limited to Indian territory and if USA patent office grants the right this will be limited to USA only ...Thus if Indian patent office grants the right your right is limited to IDian territory ..you cannot enforce right beyond this territory..or if USpatent office that is USPTO grants you the right it is limited to USA territory ..you cannot enforce this right in India ... So you got it? What is the meaning of sovereign of the state grants the right.....

So two points you have understood as of now...patent is exclusive right, and it is territorial right granted by sovereign of the state Okay now the third point.....to whom these rights are conferred....to inventor or to applicant? We will see these terminologies in detail when we will see parts of patent document however, please note the rights ...all rights of the patent are with applicant and not inventor..But please note Inventor also can be applicant...don't get boggle upon by terminologies we are learning it in details in upcoming modules...So rights are granted to the owner of the patent that is applicant of the patent Now the next question is Which are these rights? These rights are to make, sale, use and manufacture the invention He/she can sale his invention, manufacture the invented product Or he or she can make use of the invention

So the rights are received to make, sale, use and manufacture ...but on what conditions these rights are conferredWe know generally all rights come with some duties/conditions....So what are the conditions here? The first condition is owner should give complete disclosure of the invention ...what do you mean by complete disclosure of the invention Complete disclosure is that if someone else wish to explore this invention then without investing more time he/she should able to replicate the invention without much efforts...this is the meaning of the complete disclosure Is there any other condition to get the patent Yes there are certain criteria stipulated by Law which must be satisfied ... there are such three criteria/.. and any invention must satisfy all these three criteria..it is not like out of three one or two are satisfied ...only and only if all three criteria are satisfied then the invention is considered for granting of the patent....So many you might have observed ...it is written in CV or people say that I have applied for say 6 patent 4 patent etc.. that is they have submitted the application however, when the examination of that document will start, examiner will check all these if all these conditions are satisfied ...then

only patent will be granted.....and hence you see from the patent office data that there is generally 60 % rejections...why because the conditions are not satisfied...so patent application is fine that how many patents are filed is not that important but how many patents have received status as patent granted is the important...

Hence whenever patent is to be filed it is always suggested to perform search report...If you do search report 99% you get the idea about if your patent is granted or not....If your search report is positive then only you should go ahead to file patent otherwise if search report is negative till you file a patent then your patent will definitely will not be granted and you will not get any rights.... What that search report etc. we will see in the week 7 and 8 Now we have seen and understood six important points in the definition...which are these...these are

First 1. patent is an exclusive right

Second 2. it is granted by the sovereign of the state

Third 3. it is granted to the owner of the invention

fourth 4. patent give right to owner to make, sale, use and manufacture the invention

fifth 5. This right is upon complete disclosure of the invention

and

sixth 6. The right is provided only if the invention satisfies certain criteria stipulated by Law which are these criteria that we will see at the exnd of the session ..

Now the next and the last point that is seventh point in the definition of patent and that is about the time limit.... So the question is if the right is given to the owner for indefinite time or for some limited time? So as mentioned in the definition it is given for a limited period...now what is that limited period and why this limitation both questions might be popped up in your mind...So the first question.....so what is that limited time....You know itYes... It is 20 years....so the life of any patent is 20 years....so how to calculate that time from application date or grant date ...all these details we will see in week 3 when we will deal with "How to read a patent?"

Now you just remember that patent life is 20 years....Now you will say what is life of a patent if it is in USA or if it is in Europe...So the answer is anywhere in the world you go ...life of the patent is same that 20 years.....So first answer you received that what is life of patent now the next question is why that limit on time why not indefinite time... Inventor will say I have invested time and energy and resources to generate this invention... I have invested my life then why such limit...So here it is necessary to appreciate the philosophy behind development of the patent system....This 20 years life time is very important ...this is legal life of the patent...law gives this time And then we say patent is

expired..... So what is the philosophy and what happen after expiry of patent? So the philosophy is there should be balance between inventor's right and the welfare of the society... it is expected that during the 20 years of time inventor should create the wealth from the patent and so as discussed in one of the modules earlier, submission of form giving information about the working of patent is required...

Also to avoid undue benefit of the right conferred to the owner by the Act, in the patent Act there is provision for compulsory licensing...we will not go in details of that but just note that as per section 84 of the Indian Patents Act, compulsory license can be obtained if some owner takes undue advantage of the right given to him/her. Now considering the welfare of the society, this time is kept 20 years.... So what happens to patent after expiry? After expiry of the patent, that is after 20 years patent enters in public domain. What is meaning of that...the meaning is anybody now can use the patented product or process...thus due to limitation of the time...after 20 years patented product or process enters in public domain and is available for practice or exploration by anyone...

So this is the philosophy...there are so many theories and deliberations about IP system ,...we are not dealing with this now..however with the period restriction we try to seek the balance in inventor's right and the social welfare..So this is the definition of the patent...I reiterate..

- Patent is an exclusive right granted by the sovereign of the state to the owner of the invention to make, sale, use and manufacture the invention upon complete disclosure of the invention provided the invention satisfies certain criteria stipulated by Law for a limited period the term is 20 years anywhere in the world.. next important there is no world patent.. Sometimes you might have heard people say we have applied for world patent...

So please remember there is no concept as "World patent" and you know reason...we just checked this in the definitionwhy there is no "world patent" ...yes... because patent iscorrect patent is territorial right ...why territorial ...yes granting authority of the patent is Sovereign of the state... Hence there is no world patent...Then sometimes you hear ...someone says we have filed international patent application...so then what it is...it is PCT...Patent cooperation treaty So what is this PCT...we have dedicated one module on PCT in week 5....

Here it is enough to know that PCT is one the system developed at international level and is easy system to file the patent if anyone is thinking about filing a

patent in more than one country ...basically PCT provides some advantages if someone want to file patent in more than one country.....all these details we will see in the module in week 5...

So the RIGHT GRANTED TO INVENTORS are

- He or she can prevent unauthorized use of an invention
- it is limited to particular territory
- it is for a limited time
- it is Restricted by : Earlier Patents
- it is Negative right

Now the question is what is the meaning of restricted by earlier patents...So to understand this we will take example of mobile....so this mobile already have 100 of patented technology...and so suppose now you developed the 101st technology for which you received the patent also ...that is it is granted....now you will say I will use my technology as I am the owner of that technology....bur think if it is possible... Think over about commercialization of your patent...for you to develop your technology you have to take permission from other earlier patent owners...right? Without their permission you are unable to develop your technology... Got it? So this is the meaning of restricted by earlier patent ... Thus although you have received grant you are dependent on earlier patent owners to develop your technology

Now then next why it is negative right.....Any guess? Why negative right...Yea... because patent excludes others the right conferred by patent is patent owner excludes other ...excludes from what ..excludes other from the manufacture, sale, use, importation, or offer for sale of the patented product, process.. however, patent owner cannot do whatever he/she want to do with patent as it is restricted by earlier patents... so it is negative...stops or excludes other ...prevents other to take benefit from your patent....

Hence negative right ...So this is about definition and the rights of patent owner....now 6 A few facts about the patent.... Patent is a Repository of vital information Do you know how many patents are there as of now...any guess.....there are almost 100 million patent document a and is growing rapidly USPTO issues 5000 patents/wee 70% of this knowledge not published anywhere due to ICT that is there is free access to patent documents filed anywhere in the world.

Now you can appreciate the importance of the patent... Do you know when we say patent is granted what document you receive....To give you example please check

this....Now there are a few changes in the certificate and one such certificate we have kept in reading material ...you can browse through that folder...Here is an example of USPTO certificate To give you idea about the patent publication check this What is patent publication and other related information we will see in upcoming module

With this we come to the end of this session. In this session we have understood the definition of the patent

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2. granted by the sovereign of the state
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Which are these certain criteria are? we will learn about these criteria in the next module.... See you in the next session

thank you!