

ROAD MAP FOR PATENT CREATION

Novelty

Lecture 08

A very warm welcome in the third module of the week 2 of the Course, roadmap for patent creation, titled “Novelty”

In this module we will be discussing one of the criterion for the patent ... Novelty In the earlier module we have seen the definition of the patent. In that we have noted that certain criteria need to be satisfied by the invention to be considered for the patent granting... which are these criteria?

So there are three criteria

1. Novelty
2. Non-obviousness and
3. Industrial application

In this module we will concentrate on “Novelty” What is novelty?
As per Oxford dictionary, novelty is - The quality of being new, original, or unusual
Before going in details of Novelty aspect, I wish to put forward definition of Invention As per Section 2 (j)of Indian Patents Act, 1970, "invention" means a new product or process involving an inventive step and capable of industrial application;

So three points mentioned in the definition are

1. new product or process
2. inventive step
3. capable of industrial application

as per the definition, new product or process is the novelty aspect of the invention inventive step is the non-obvious aspect and capable of industrial application is the industrial applicability. so we are dealing with first aspect in this module.. What is the meaning of inventive step... Section 2 (ja) defines “Inventive step” as a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that invention not obvious to a person skilled in the art

In the Act you will see one more definition that is “new Invention” So as Section 2 (l) "new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete

specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art;

So there are two important points in this definition

1. any invention or technology which has not been anticipated by publication in any document
2. any invention or technology which has not been used in the country or elsewhere in the world before the date of filing of patent application and then it says the subject matter has not fallen in public domain or that it does not form part of the state of the art what is state of the art As per the oxford university state of the art is “using the most modern or advanced techniques or methods; as good as it can be at the present time”

So you can understand from these two definitions that is invention and new invention, that

- Invention should not form a part of the global state of the art
- Novelty is assessed in a global context
- Novelty is determined through extensive literature and patent search

Patent search is essential and critical for ascertaining novelty as most of the information reported in patent documents does not get published anywhere else Please see this example.. A 16 year boy works on the project in medical sciences domain and develops a device to detect silent heart attacks So here in this case, how we will check novelty aspect....

As per definition the invention is novel if

1. any invention or technology which has not been anticipated by publication in any document
2. any invention or technology which has not been used in the country or elsewhere in the world before the date of filing of patent application

here if Akash want to patent his invention he has to satisfy two conditions mentioned above so before making his invention public he should have filed a patent for his invention and second he should not have commercialized his product before filing the patent then only we will say invention or technology is not anticipated by publication and invention or technology has not been used in the country or elsewhere in the world here are a few things we have to remember that before filing the patent inventor and applicant must ensure that they are maintaining secrecy. That is they are not disclosing things to people who probably will share the invention with others and made it public...so sharing of invention should be careful before patent filling...

There should not be media disclosure; journal publication, web disclosure or magazine publication. So no publication next is what you are thinking as novel product or process, it should not be common knowledge by the concerned field experts next is there should not be sale as well as no public display. So how patent examiner check this novelty. He will take into consideration all documents published before the filing of the patent that will include research papers, magazines, newspaper, etc.

Examiner will check all patent documents filed before in any of the patent offices in world. Now if the subject under consideration is not disclosed before the filing then we say novelty aspect is satisfied. A prior art will be considered as anticipatory if all the subject matter of the invention under consideration is cited in prior art. According to European patent office prior art is "Prior art is any evidence that your invention is already known. Prior art does not need to exist physically or be commercially available. It is enough that someone, somewhere, sometime previously has described or shown or made something that contains a use of technology that is very similar to your invention." so here first to file is very important. In one of the earlier modules we have introduced two terminologies

First to file, First to invent. First to invent was the rule in USA but now everywhere in the world first to file rule is followed. That is before filing the invention the subject matter should not be a part of the prior art. Now we quickly see a few important examples about Novelty establishment which will help you to understand the novelty aspect in little more detail. In *Lallubhai Chakubhai v. Chimanlal Chunilal & Co.* A.I.R. 1936 Bom. 99. With reference to publication in public domain, it is clarified that if the prior publication is contained in a document, it may not be necessary that members of the public should have actually read the document. It is enough if the document is accessible to the public without much trouble. Check this decision of the controller in one of the cases. A document will not be a proper anticipation unless it gives the public the same information as that given by the applicant's specification. Mosaic of extracts called from several documents would not constitute a relevant anticipation.

In deciding the case between *M/s. Crompton Greaves Ltd. Mumbai V/s. M/s. Bharat Heavy Electricals Ltd. Hyderabad* it is established that for establishing the novelty aspect, we do patent search report. This search report is based on checking all the patent and other literature documents. If search report is positive, then chances of grant of patent are more provided other criteria of patentability are fulfilled. With this we come to the end of this session. In the next session, "Non-Obviousness", See you in the next session

thank you!

