

PATENTS AND TRADEMARK

The intellectual property relates to the creation of human mind and human intellect. The other words, intellectual property relates to pieces of information, which can be incorporated in tangible objects.

A trademark, copyright or a patent right are the important IPRS. They are known as incorporeal assets. As patents, copyrights and trademarks represents title to property, they can be sold or assigned by the owner or holder thereof to another person in accordance with law.

PATENTS ACT, 1970

INTRODUCTION OF THE ACT:

The objective and purpose of patent law is to encourage scientific research, new technology and industrial projects. The fundamental principle of Patents Act, 1970 is that the patent is granted for the invention which is new and useful.

Patents Act, 1940 was made to protect Indian drugs, pharmaceuticals, chemical industries and Indian Agriculture from foreign completion.

CONCEPT OF PATENT:

Patent mean a patent grated under the Patents Act, 1970.

Society as a whole and individual inventor. The inventor gets the exclusive rights to prevent others from making, using, selling a patented invention for a fixed period of time, in return for the inventors, disclosing the details of the invention to the public. In this way, inventor is rewarded for his endeavors and he is encouraged to disclose the benefits arising out of his inversion. Patent right are granted only to new inventions capable of industrial application.

WHAT CAN BE PATENTED:

Any inventions maybe patented. Invention means new product or process involving an inventing step and capable of industrial application. Inventing step means a feature that makes the invention not obvious to a person skilled in that art.

WHAT CANNOT BE PATENTED:

Anything which is not an invention, cannot be patented.

1. If its use contrary to law or morality.
2. Mere discovery.
3. Aggregation of properties by mere mixture of 2 or more things.
4. Rearrangement or duplication.
5. Method of agriculture or horticulture.
6. Presentation of information.
7. Topography of integrated circuits.
8. Method of performing any mental act or method of playing any game.
9. Inventions based on traditional knowledge.
10. Literacy, dramatic, musical work or any aesthetic creation.

PROCEDURE TO GRANT PATENT:

1. Any person claiming to be the true and first inventor of the invention.
2. Any person, being the assignee, of the person claiming to be the true and first inventor of the invention
3. Legal representative of any deceased person who immediately before his death was entitled to make such an application.

GRANTS OF PATENTS:

1. The application has not been opposed and time for filling the opposition has expired.
2. The application has been opposed but the opposition has been finally decided in favor of the applicant or
3. The application has not been refused by the controller of patents by virtue of any power vested in him.

PATENT OF ADDITION:

Patent of addition is a patent for improvement in, or modification of an invention for which invention, a patent has already been applied for or granted.

Tenure of patents:

The patent is granted under the patent act, 1960 is 20 years from the date of filing the application for patent. Renewal fees is payable at the expiration of 2nd year from the date of patent and thereafter for succeeding years.

Restoration of lapsed patent:

Patent lapses for non payment of renewal fees. It can be restored by making an application to the Controller of Patents within 18 months from the date of lapse.

Assignment/licensing of patent:

A patentee can assign or license his rights in the patent in favor of any person. The aforesaid document must be filed with the Controller of Patents within 6 months from the date of execution.

Surrender of Patents:

A patentee can at any time surrender his patent by giving notice to the Controller of Patents. The controller of patents will advertise the application for surrender of patents, invite the objections and then after hearing the concerned parties, he can accept the surrender of patent and then revoke the patent.

Revocation of Patent:

1. If patentee fails to comply with the request of the central government to make, use or exercise patented invention for the purpose of the govt.
2. If the patent is not reasonably worked within two years after compulsory licensing .
3. Central government can revoke a patent if it is exercised in a mischievous mode to the state or is generally prejudicial to the public interest.

Infringement of Patents:

Infringement means violating the statutory rights of the patentee, his grants and his license. A suit for infringement can only be filed in the district court.

The reliefs that can be claimed are:

1. Damages and a share of profit to patentee; and
2. Injunction on infringement on such terms and conditions as the court may deem fit.

The court can also order that infringing goods shall be seized, forfeited, or destroyed as the court deems fit.

Company secretary as Patent agent:

Section 126 of the patents act, 1970, provides that a person shall be qualified to have his name entered in the register of patent agent, if he is a citizen of India, completed the age of 21 years.

A person shall also be qualified to have his name entered in the register of patent agent under section 126, if he has a total period of not less than 10 years functioned either as an examiner or discharged the functions of the controller under section 73 of the act or both, but ceased to hold any such capacities at the time of making the application for registration.

TRADEMARK

MEANING OF TRADEMARK:

A trademark is any word, symbol, phrase or logo design adopted and placed on a product offered for sale or on a container to identify its source. Trademarks are an integral part of a firm's strategy to differentiate its products and services from other competitors and to establish consumers brand loyalty.

Definition of trademark:

Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

Registration of trademark:

Administrative setup: trademarks are to be registered with controller general of patents, designs and trademarks which will be registrar for the purposes of this act.

Classification of goods and services: the goods have been classified into 34 classes and services have been classified into 8 classes for the purpose of registration under trademarks act, 1999.

Infringement of Trademark:

Meaning: a registered trademark is infringed when a person, other than a registered proprietor or a person using by way of permitted use, uses in course of trade.

Instances of infringement of trademark:

1. Use of deceptively similar mark.
2. Use of mark of similar identity.
3. Unauthorized use of trademark on material intended to be used for labeling or packaging of goods.
4. Use of a registered trademark in an advertisement, taking unfair advantage in the advertisement which is against the reputation of that product.

Infringement and passing-off:

1. Injunction
2. Either damages or an account of profits, at the option of the plaintiff.
3. Order for delivery of infringing labels and marks for destruction.

Assignment and transmission:

A registered trademark can be assigned by the proprietor of trademark to any other person, in return of some consideration. Registered trademark can be assigned or transmitted with or without goodwill of business concerned in respect of all goods or services or some of the goods or services.

Certification of Trademark:

Certification trademark is a mark capable of distinguishing by the goods or services in connection with which it is used in the course of trade, which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture or performance of services, quality, etc., from goods or services not so certified

Foreign Exchange Management Act 1999

The Foreign Exchange Management Act, 1999 is an Act of the Parliament of India "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India".

Objectives of FEMA:

The main objective of FEMA was to help facilitate external trade and payments in India. It was also meant to help orderly development and maintenance of foreign exchange market in India. It defines the procedures, formalities, dealings of all foreign exchange transactions in India. These transactions are mainly classified under two categories -- Current Account Transactions and Capital Account Transactions.

FEMA is applicable to all parts of India and was primarily formulated to utilize the foreign exchange resources in efficient manner. It is also equally applicable to the offices and agencies which are located outside India however is managed or owned by an Indian Citizen. FEMA head office is known as Enforcement Directorate and is situated in heart of city of Delhi.

Applicability of FEMA Act:

- exports of any goods and services from India to outside, foreign currency, that is any currency other than Indian currency,
- foreign exchange,
- foreign security,
- Imports of goods and services from outside India to India,
- securities as defined in Public Debt Act 1994,
- banking, financial and insurance services,
- sale, purchase and exchange of any kind (i.e. Transfer),
- any overseas company that is owned 60% or more by an NRI (Non Resident Indian) and
- any citizen of India, residing in the country or outside (NRI)

Major Provisions of FEMA Act 1999:

Here are major provisions that are part of FEMA (1999) –

- Free transactions on current account subject to reasonable restrictions that may be imposed.
- RBI controls over capital account transactions.
- Control over realization of export proceeds.
- Dealing in foreign exchange through authorized persons like authorized dealer or money changer etc.
- Appeal provision including Special Director (Appeals)
- Directorate of enforcement
- Any person can sell or withdraw foreign exchange, without any prior permission from RBI and then can inform RBI later.
- Enforcement Directorate will be more investigative in nature
- FEMA recognized the possibility of Capital Account convertibility.
- The violation of FEMA is a civil offence.
- FEMA is more concerned with the management rather than regulations or control.
- FEMA is regulatory mechanism that enables RBI and Central Government to pass regulations and rules relating to foreign exchange in tune with foreign trade policy of India.

AUTHORISED PERSON

• FEMA permits only authorised person to deal in foreign exchange or foreign security. Such an authorised person, under the Act, means authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised by Reserve Bank. FOREIGN EXCHANGE TRANSACTIONS

- Capital account transactions

- Current account transactions transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person is resident in India which acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India. Contravention And Penalties

- If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Dealing in foreign exchange

- The Act prohibits any person who:- – Deal in or transfer any foreign exchange or foreign security to any person not being an authorized person; – Make any

payment to or for the credit of any person resident outside India in any manner; – Receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner; – Enter into any financial