




Scope of Patentability Under The Indian Patents Act



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Legislative Framework - Indian Patents Law



The Patents Act, 1970
(as amended in 2005)

And

The Patents Rules, 2003
(as amended in 2006)



What is an Invention?

Sec.2(1)(J)

“Invention” means a new product or process involving an inventive step and capable of industrial application

Patentable subject matter

Invention must

- ◆ relates to a **Process or Product or both**
- ◆ be new (**Novel**)
- ◆ involves an **inventive step**
- ◆ be Capable of **industrial application**
- ◆ not fall under **Section 3 and 4**

"NEW" MEANS

Invention must not be

- **Published in India or elsewhere**
- **In prior public knowledge or prior public use with in India**
- **Claimed before in any specification in India**

Inventive step

A **feature of an invention** that


- involves technical advance as compared to the existing knowledge or
- have economic significance or both and
- makes the invention not obvious to a person skilled in the art



Industrial application

means

Invention is capable
of being made or
used in any kind of
industry



Section 3 exclusions

Section 3(a)

- ◆ Frivolous inventions
- ◆ Inventions contrary to well established natural laws

Examples

- Machine that gives more than 100% performance
- Perpetual machine

Section 3 exclusions

Section 3(b)

Commercial exploitation or primary use of inventions, which is

- **Contrary to**
 - public order or
 - Morality

Examples

- Gambling machine,
- Device for house-breaking ,

Section 3 exclusions

Section 3(b)

Commercial exploitation or primary use of inventions, which

➤ Causes serious Prejudice to

- health or
- human, animal, plant life or
- to the environment

Examples

- Biological warfare material or device, weapons of mass destruction
- Terminator gene technology,
- Embryonic stem cell

Checks and Balances

Section 3(b)

Excludes patents on

- ◆ GMOs – exploitation of which could be contrary public order or morality or prejudicial to human, animal or plant life or health or to the environment

Effect : Only genetically modified micro-organisms (GMOs) which do not fall under section 3 (b) are patentable.

Section 3 exclusions

Section 3 (c)

- ◆ Mere Discovery of a Scientific Principle or
- ◆ formulation of an Abstract Theory or
- ◆ discovery of any living thing or
- ◆ discovery of non-living substance occurring in nature

Examples

- Newton's Laws
- Superconducting Phenomenon as such
- Property of certain material to withstand mechanical shock
- Discovery of micro-organism
- Discovery of natural gas or a mineral

Checks and Balances

Section 3(c)

Excludes patents on

◆ Naturally occurring Micro-organisms

Effect

Genetically modified microorganisms (GMOs) are however, patentable.

Section 3 exclusions

Section 3 (d)

- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance

Section 3 exclusions

Section 3 (d) *Explanation*

For the purposes of this clause,

- ◆ salts, esters, ethers, polymorphs,
- ◆ metabolites, pure form, particle size,
- ◆ isomers, mixture of isomers,
- ◆ complexes, combinations and other derivatives of known substances

*shall be considered to be the same substance, unless they differ significantly in properties with regard to **efficacy**.*

Examples

- **Crystalline forms of known substance**

Checks and Balances

Section 3 (d) Explanation

Effect

Salts, esters, ethers, polymorphs, metabolite, pure forms, particle size, isomers, complexes, combinations and derivatives of a known substance with enhanced efficacy are patentable

Section 3 exclusions

Section 3 (d)

- Mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus, *unless such known process results in a new product or employs at least one new reactant.*

Examples

- New use of Aspirin for heart ailments,
- Mere new uses of Neem

Section 3 exclusions

Section 3(e)

Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance

Examples

- Combiflam [Paracetamol (Antipyretic) + Brufen (analgesic)]
- Solution of sugar and color additives in water to form a soft drink

However,

A mixture resulting into synergistic properties of mixture of ingredients however, may be patentable - Soap, Detergents, lubricants etc

Checks and Balances

Section 3 (e)

Effect

- Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or
- a process for producing such substance **are not patentable**

However

Synergistic formulations are patentable

Section 3 exclusions

Section 3 (f)

Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way

Examples

- A Bucket fitted with torch,
- An Umbrella with fan
- A Clock and radio in a single cabinet
- A flour-mill provided with sieving

Section 3 exclusions

Section 3(h)

Method of Agriculture or Horticulture

Examples

- Cultivation of algae ,
- Producing new form of a known plant,
- Preparation of an improved soil

However,

Agricultural Equipments are patentable

Section 3 exclusions

Section 3(i)

Any process for medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings *OR* a similar treatment of animals to render them free of disease *OR* to increase their economic value or that of their products

Examples

- Removal of cancer tumor
- Removal of dental plaque and carries
- Surgical processes
- Processes relating to therapy
- Method of vaccination,
- Blood transfusion

However,

- Treatment performed on tissues or fluids permanently removed from the body
- Surgical, therapeutic or diagnostic Apparatus or instruments

are patentable

Section 3 exclusions

Section 3(j)

Plants & animals in **whole or any part thereof** other than micro-organisms, but including seeds, varieties and species and essentially biological process for production or propagation of plants & animals

Section 3 exclusions

Section 3(j)

- ◆ Plants & animals in whole
- ◆ Parts of plants & animals
- ◆ Seeds
- ◆ Varieties & species
- ◆ Essentially biological processes for propagation or production of the animals & plants

Checks and Balances

Section 3(j)

Excludes patents on

- ◆ Plants and animals in whole or any parts thereof, including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals

Examples

- Clones and new varieties of plants
- A process for production of plants or animals if it consists entirely of natural phenomena such as crossing or selection
- Essentially biological Process

Section 3 exclusions

Section 3(k)

- * mathematical method or
- * business method or
- * algorithms or
- * computer programme *per se*

Examples

- *Computer program by itself or as a record on a carrier*

However

- New calculating machine
 - combination of hardware and software
- is patentable**

Section 3 exclusions

Section 3(I)

A literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic work and television productions

These subject-matters fall under the copyright protection

Section 3 exclusions

Section 3(m)

A mere scheme or rule or method of performing mental act or method of playing game

Examples

- ◆ Scheme for learning a language
- ◆ Method for solving a crossword puzzle,
- ◆ Method of learning a language
- ◆ Method of teaching /learning

However,

- ◆ Novel apparatus for playing game or carrying out a scheme *is patentable*

Section 3 exclusions

Section 3 (n)

Presentation of information

Examples

- Any manner or method of expressing information whether by
 - *spoken words*
 - *Visual display*
 - *symbols*
 - *diagrams*
- Information recorded on a carrier

Section 3 exclusions

Section 3 (o)

Topography of integrated circuits.

Examples

Mask works - circuits layout

Section 3 exclusions

Section 3 (p)

Inventions which are

Traditional Knowledge or an aggregation or duplication of known properties of traditionally known component or components

Examples

Traditional Knowledge already in public domain
- Wound healing property of Haldi

However,

Any value-addition using Traditional Knowledge leading to a new process or product, which is novel with inventive step and industrial applicability,

- Extraction of Azadirachtin from Neem
can be *patented*

Non Patentable inventions

Section 4

Inventions falling within Section 20(1) of the Atomic Energy Act, 1962 are not patentable

Effect

Inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by Central Govt. from time to time.

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Thanks