

Quadrant II – Notes

Paper Code: PRC 0426/PRC 0814

Module Name: Subject matter of Patent

Module No: 08

Subject mater of Patetn

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Introduction

- New or novel inventions alone are patentable
- Invention may relate to product or process
- Invention satisfies the following essentials alone are patentable
 1. Novel or new invention
 2. Useful invention
 3. Non obvious
 4. Industrial application or patentability
 5. Should be in writing with all details
- Above features are mandatory to obtain patent

A process can be patented

- If it results in production of
 1. New article or
 2. A more useful or
 3. Cheaper article than what is produced by old method
- Even if there is no new or better production
- Example: In drug industry where a new process of a manufacture drug is patentable
 1. COVID-19 – Vaccine – Covaxin, Covishield, Sputnik, etc.,

Subject matter of Patent

- Subject matter that is protected under the Patent Act
 1. New and useful process or product
 2. Art, process, machine,
 3. Article of manufacture or composition of matter or
 4. Improvements to them
 5. Patents are available for improvements to existing machines or processes
 6. Any new and useful things

Settled proposition

- Full disclosure of patent is mandatory
- If inventor fails to disclose - patent will not be granted
- Act imposes a duty of full disclosure of the invention in the complete specification
- Tangible things such as machine, apparatus, article or substance are patentable
- Intangibles are non-patentable
- There is an invention or not is a question of fact
- The result of an invention is protected
- Non-patentable inventions or Exceptions
- Sec 3 and 4 of the Act deals with non-patentable inventions.
- Though the invention is
- New, useful, non-obvious and having industrial applicability
- Sec 3 and 4 of the Act deals with non-patentable inventions.
- Though the invention is
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Sec. 3 consist of --- Clauses from (a) to (p)

Frivolous invention **Sec. 3 (a)**

- Perpetual Motion machine, machine giving output without any input

Contrary to public order or morality **Sec. 3 (b)**

- Machine for gambling, Fake currency making machine

Discovery of scientific principle, abstract theory **Sec. 3 (c)**

- Einstein's theory of relativity, Newtons' law of gravity

Mere discovery of NEW FORM OF KNOWN SUBSTANCE, of a new property, new use of known substance, mere use of known process – **Sec 3.(d)**

- Salt, Esters, isomers, particle size – use of pen, knife

Substance obtained by ADMIXTURE resulting in aggregation of properties **Sec. 3 (e)**

- Mixing sugar and salt, Mix of Brufen tablet and Crocin – not new

Mere arrangement or rearrangement of known devices each functioning INDEPENDANTLY **Sec. 3 (f)**

- Fixing umbrella with torch, collection of bacterium each having nitrogen fixation property. Use of scarf

Sec 3. (G) is deleted

Method of agriculture or horticulture **Sec. 3 (h)**

- New method of growing wheat in summer.

Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic (healing) **Sec. 3 (i)**

- Method of surgery, method of blood transfusion, removal of dental plaque

Plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production of plants and animals **Sec. 3 (j)**

- Genetically modified plants, animals , BT Cotton, BT Brinjal

Mathematical or business method or a computer program per se or algorithms **Sec. 3 (k)**

- New methods in calculation

Literary, dramatic, musical or artistic work or any other aesthetic creation - including cinematographic works and television productions **Sec. 3. (l)**

- Protected under Copyright legislation

Mere scheme or rule or method of performing mental act or method of playing game **Sec. 3 (m)**

- Method of playing chess, cricket

Presentation of information – **Sec. 3 (n)**

- Mode of expression of information – power point, OHP, Board and chalk

Topography of integrated circuits – **Sec. 3 (o)**

- Separate legislation to protect IC

An invention which, in effect, is traditional knowledge or It is an aggregation or duplication of known properties of traditionally known component or components – **Sec. 3 (p)**

- Haldi or turmeric, Neem, Yoga, Garlic, Ginger

Sec.4 Non patentable invention

- An invention relating to atomic energy
- Falling within sub-section (1) of section 20 of
- The Atomic Energy Act, 1962

Takeaway

- Invention means new product or process
- Even if the invention satisfies all the essentials
- Once it comes under exceptions
- Specified under Se. 3 or 4 – such inventions are non patentable
- Sec. 3 contains more than 15 categories, that are exceptions or non patentable invention
- Inventor should keep in mind the exceptions before his invention