

Programme : B.A .LL.B
Subject : Law
Semester : LL. B DEGREE Semester IV/B.A.LL.B SEMESTER VIII
Paper Code :PRT 0814 SEMESTER VIII/ PRT 0426SEMESTER IV
Paper Title : PATENTS, CREATION AND REGISTRATION
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The Controller of Patents

Is the principal officer responsible for administering the patent system in India. Controller referred to in Section 73(1) of the Patents Act, 1970 is the Controller General of Patents, Designs and Trade marks. The government appoints this officer. Chapter XV of the Patents Act, 1970 section 77 to 81 and the Patent Rules, 2003. deal with powers of the Controller. The Controller of Patents plays an important role in processing the application and granting the patent to the inventor. Controller of Patents can issue compulsory license.

Powers of the Controller

1. General Powers
2. Discretionary Powers
3. Other Powers

General Powers of the Controller

Section 77 of The Patents Act, 1970 and Rule 136 Patent Rules, 2003

Controller can exercise powers of a Civil Court under the Civil Procedure Code, 1908. In any proceedings before him under this Act:

- a. Summoning and enforcing attendance of any person, examining on oath.
- b. Requiring the discovery and production of documents.
- c. Receiving evidence on affidavit.
- d. Issuing commissions for the examination of witnesses or documents.
- e. Awarding costs.
- f. Reviewing own decision on application made within prescribed time.
- g. Setting aside ex-parte order.

Section 77 (1)(e) of The Patents Act, 1970 and Rule 63 and 136 Patent Rules, 2003 Awarding Costs.

Section 77 (2) of The Patents Act, 1970 - Any order of the Controller of awarding costs is executable as a decree of the civil court.

The amount of costs awarded by the Controller is specified in the Fourth Schedule and should not exceed that specified amount. The Controller of Patent on own discretion award any amount of compensatory costs in any civil proceeding which are false.

Review

Section 77 (1)(f) of The Patents Act, 1970 and Rule 130 of the Patent Rules, 2003

Review is filed in Form 24 under section 114 and Order XLVII of Civil Procedure Code, 1908.

It must be made within one of the decision and must be accompanied by a statement stating the grounds on which the review is sought.

Application for review of ex-parte order made by the Controller should be made in Form 24 within one month from the date of passing the order.

Can the Controller correct clerical errors?

The Controller can correct clerical errors subject to the provisions of Section 57, 59 and 94.

Section 57 of Patent Act, 1970 – Controller can allow application and specification to be amended while any suit for infringement of patent is pending before the High Court.

Section 57 can be granted provided conditions laid down in Section 59 are fulfilled.

Section 78 of The Patents Act, 1970 –

Correction of any clerical error in any patent or in a specification or other document filed or entered in the register.

Correction can be made either or on any request made by the party in writing with the prescribed fee or without a request.

Controller must give notice to the patentee and give opportunity of hearing the applicant.

If the correction to be made **materially alters (substantive correction)** the meaning and scope of the document then the Controller has to publish the proposed correction.

Within prescribed time any person can give notice to the Controller of opposing the request.

Controller can give notice to the person and opponent and opportunity of being heard.

Section 79 Evidence to be given to the Controller

In normal case evidence must be given by affidavit.

In any case the Controller thinks it right to do so may take oral evidence or take affidavit in evidence or allow a party to be cross examined on the contents of the affidavit.

Petition for Obliviating Irregularity

Rule 137 of the Patent Rules, 2003

The Controller of Patent has power to amend any document and any irregularity in procedure may be obliterated without detriment to the interest of the party.

Mention of Inventor in Patent

Section 28(1)(b) of Patent Act, 1970 and Rule 57 to 63 and 66 to 70 of the Patent Rules, 2003

Section 80 Exercise of Discretionary powers of the Controller

The Controller can hear any party to the proceedings.

Give such a party an opportunity of being heard.

Controller can give any applicant for patent or for amendment or specification an opportunity of being heard before exercising adversely discretion vested on the Controller.

Party desiring hearing must make request within ten days.

Section 81 Power for extension of time

Controller can extend the time for doing any act.

There is no need for giving notice to or hear the opposite party interested in opposing the extension.

No Appeal can be filed from the order of the Controller for extending time.

Rule 137 & 138 – Authority cannot reject application for condonation of delay if application is filed after prescribed delay.

Section 8(2) of The Patents Act, 1970 – gives power to the Controller to ask for any information regarding the processing of the application in a country other than India at any time before the grant of patent.

The applicant must make sure that the information is submitted to the satisfaction of the Controller.

Controller may sustain the objection or reject the grant if he is not satisfied with the information disclosed.

Chemtura Corporation vs. Union of India 2009 (41) PTC 260 (Del)

The Delhi High Court held that the applicant was required to periodically update the Controller on the current status of the foreign application.

Section 17 of The Patents Act, 1970 –

Power for postdating an application.

Postdating of a patent can be done only to the date of filing of the complete specification.

Section 9(1) of The Patents Act, 1970 – A complete specification must be filed within 12 months from the date of filing the application.

Date of Provisional Application cannot be post dated.

Section 12 - Controller has power to entertain and examine application for the grant of patent.

Section 15- Power to direct amendments in specifications.

Section 16- If combined application is filed for more than one invention controller can direct for division application for each invention.

Section 88- Power to grant compulsory license.

Section 86- Power to adjourn application for compulsory license.

Section 51- Power to give directions to the co-owners of patents.

Section 146 Power to call for information from patentees.

Section 35- Power to issue secrecy directions for prohibiting or restricting publication of information for inventions relating to defense purpose.

Section 130 – Power to remove/restore names of patent agents from Register.