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**A BRIEF STUDY OF PATENT SYSTEM IN INDIA
IN LIGHT OF THE PATENT COOPERATION TREATY**

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ABSTRACT

Patent law in India can be traced back into the 1970's when the Patents Act of 1970 alongside the "Patents Rule of 1972" came into force on "20th of April 1972" and replaced the "Indian Patents and Design act of 1911." The "Patents Act" was largely based on Justice N. Rajagopala Ayyangar's Ayyangar Committee Report recommendations. One of the recommendations was to "allow only process patents for inventions related to pharmaceuticals, medicines, food, and chemicals." Later, India signed a plethora of international treaties in order to enhance its patent system and bring it into line with the rest of the globe. Joining the Trade Related Intellectual Property Rights (TRIPS) system was an important step in achieving this goal.

The aim of this paper is study the patent system of India with respect to the Patent Cooperation Treaty

Keywords: Patent Law, Treaties, Patent cooperation treaty, Patent system

INTRODUCTION

India signed the "Paris Convention" and the "Patent Cooperation Treaty" on December 7th, 1998, and the Budapest Treaty on December 17th, 2001.

When it comes to patent treaties, the Patent Cooperation Treaty is one of the most essential. The Patent Cooperation Treaty creates a means for assisting applicants and other industries who want to file patents. The "Patent Cooperation Treaty" was created to eliminate the large quantities of repetitive and duplicate work that would be required if a person filed patents in each country using their respective national procedure. In essence, the Patent Cooperation Treaty allows an applicant to file a single international patent application for his invention that will be accepted by all of the countries that are members of the Patent Cooperation Treaty and signatories to it. This one application has the same impact as a number of separate national applications from different countries.

"The Patent Cooperation Treaty" simplifies not only the submission of a patent application, but also the procedures for searching for prior art, publishing the application, and scrutinising and evaluating an invention's patentability. The Patent Cooperation Treaty was created with

the primary purpose of streamlining the patent system and making it more effective and cost-effective. This purpose is to safeguard the interests of all users of the patent system, as well as the administrative offices in charge of it.

PATENT SYSTEM IN INDIA

A patent is a contract between the inventor or patent applicant and the government that grants the inventor or applicant a monopoly for a set period of time in exchange for full disclosure of the innovation. To foster technical and economic growth, the patent system assures that information about new innovations is made available for eventual public use.

Procedures for Granting Patents

A request for examination must be made to the Indian patent officer as soon as the patent application is filed. Following the initial assessment, the applicant is given the opportunity to make any necessary revisions to the application. The adjustments must be implemented within 12 months after the initial examination report's release. If the same is not completed within the specified time, the applicant will be charged with avoidance and ignorance. If all of the requirements have been met, the patent will be awarded and published in the Patent Office Journal.

The term of a Patent

Every patent is valid for 20 years from the date of filing, regardless of whether the application was filed with a provisional or complete specification. The 20-year term begins on the priority date for applications filed under the “Patent Cooperative Treaty (PCT).” Every year, the patentee must renew the patent by paying the renewal fee.

Patent Restoration

A patent can be revived by filing an application with a stipulated fee within 18 months of the patent's expiration date. Following receipt of the request, the case is processed in the official journal, and the applicant is notified after a period of time.

A Patentee's Rights

If a patent is granted for a product, the person has the “right to prevent” others from making, using, offering, or selling that product in the market; if the patent is granted for a process, the person has the right to prevent others from using that processor, offering, or importing that process's product anywhere in the world.

Certain inventions cannot be patented because they are obvious, frivolous, or contrary to law, morality, or health, such as a simple discovery of a principle, abstract theory formulation, reorganisation of copying of other services, agricultural methods, and inventions related to atomic energy, among others.

The Indian Patent Officer maintains secrecy.

All patent applications must be kept confidential from the time they are filed until they are published in the patent office's official journal. After the documents are published, the public can view them and obtain a copy by paying a charge.

Compulsory license

Compulsory licencing of a product or process is required by the patent laws, but the licence is only issued when certain terms and conditions have been met. After a period of three years has passed since the patent's ceiling has been reached, any individual can apply to the Controller of Patents for a licence to the invention, subject to specific requirements.

1. The public's needs in relation to patent inventions have not been met.
2. The patent invention cannot be purchased at a fair cost.
3. That the invention isn't being used within India's borders

Any individual can apply for a compulsory licence, regardless of whether or not he currently has a patent licence in his name. By virtue of any admission made by him, no one may be barred from asserting that the requirements of the general public are not satisfied with respect to the patent invention or that the invention is not made available to the general public at a reasonable price.

And if the controller's conditions are met, he may award a patent to the applicant by order, if he sees fit.

Before awarding a licence, the patent controller considers the following factors:

1. The origins of invention
2. Efforts made by the licensee to fully exploit the innovation
3. The applicant's ability to make the product beneficial to the wider public
4. In the event of a national emergency or other dire circumstances,
5. Non-commercial use in the public domain
6. Adoption of anti-competitive tactics

The compulsory licence cannot be taken as a matter of right; it is subject to the above-mentioned restrictions as well as the Controller of Patents' discretion. Any improper order against the controller for the grant of a licence can be challenged in court.

PATENT COOPERATION TREATY

When it comes to treaties for filing patents, the Patent Cooperation Treaty is regarded as quite important. The Patent Cooperation Treaty establishes a method to assist applicants who desire to file patents as well as other industries. The Patent Cooperation Treaty was developed to avoid the massive amounts of repetitious and duplicate work that would be required if a person filed patents individually in each country using their own national method. Essentially, the “Patent Cooperation Treaty allows an applicant to file a single international patent application for his invention that is acceptable to all of the nations included in his application that are also members of the Patent Cooperation Treaty and signatories to it.” This single application has the same impact as multiple individual national applications from various countries. “The Patent Cooperation Treaty” streamlines not just the process of filing a patent application, but also the procedures for searching for prior art, publishing the application, and scrutinising and evaluating the patentability of an invention. The Patent Cooperation Treaty was established with the primary goal of simplifying the patent system, making it not only more effective but also more cost-efficient. This goal is to protect the interests of all users of the patent system as well as the offices in charge of its administration.

PATENT COOPERATION TREATY: PROVISIONS

The “Patent Cooperation Treaty” has established an “international system” that allows an applicant to file a patent with only one international application sent to only one receiving office. This provision enables him to submit an application in a single language, most commonly English, that will be accepted in all countries that are members of the Patent Cooperation Treaty and to whom the applicant has designated in his application.

Only one receiving office of the patent can formally consider the international application under the Patent Cooperation Treaty.

Each foreign application is followed by an international search under the Patent Cooperation Treaty. This search yields a report containing all relevant patent documents for previously published inventions. These are taken into account while determining whether or not the invention may be patented, and they are notified to the applicant before being published.

“The Patent Cooperation Treaty” makes it possible to communicate with all of the designated offices included in the international application. The Patent Cooperation Treaty has also centralised the process of search report publication.

The aforementioned approach is also referred to as the 'International Phase' of the Patent Cooperation Treaty's whole process. Aside from that, the Patent Cooperation Treaty method features a 'National Phase' that deals with the costs of filing an international patent application. This work is managed by the national offices of the nations listed in the international application.

If the applicant desires to file an international application after filing a local application for a patent, he must do so within a 12-month period under the Patent Cooperation Treaty. The application's national phase will begin in 20 or 30 months, depending on the applicant's preference. The formal application, the international search, the international publication, the international examination for patentability, any amendments to the application before it gets to the national phase, and finally the translation of the application and payment of a fee are all part of this procedure.

PATENT SYSTEM IN LIGHT OF COOPERATION TREATY

The Phase for National Entry of the Application of the Patent Cooperation Treaty: On the date of the International Application, all applications for the Patent Cooperation Treaty that have a designated country, such as India, and are patent applications for India are filed. The duration of entry into the national phase is thirty-one months from the priority date.

The following are the fundamental conditions for entering the National Phase of the application in India:

1. The title of the invention, the applicant's name, the applicant's address, the applicant's nationality, the name of the investors, the investors' addresses, and the investors' nationalities must all be included in the application.
2. The applicant must also submit all of the facts and specifications that he has filed with the International office. The claims, drawings, and abstract should all be included in these requirements. If the application is filed in a language other than English before the International Office, the applicant must submit a certified English translation of the application during the national phase.

3. During the national phase, the applicant is required to deposit the prescribed Fees with the application, either by demand draught, local check, or cash.

Following that, the national office process will commence, and various documents must be sent to the office either with the application or within a set time frame. The documents that must be provided are as follows:

1. If the applicant is not the inventor, an assignment deed must be provided.
2. A Declaration of Inventorship must be submitted by the applicants.
3. Every six months, an undertaking and a statement on the progress of equivalent Applications in the other selected countries,
4. a Power of Attorney for the Agent, duly stamped
5. A copy of PCT/IB/304 or the Priority document is required. If the priority document is in a language other than English, the applicant must additionally provide an English translation of the priority document, as well as certification to support it.
6. If applicable, an International Search Report as well as an International Preliminary Examination Report.)

If the applicants want to change anything about their International Application, they can do so during the national phase. However, the applicant must keep in mind that such revisions are limited to the information disclosed in the initial application. Any extraneous or new material cannot be added to the amendments.

It is also feasible to file for a complete specification in relation to two or more provisional specifications during the national phase if the inventions revealed in them are cognate or development of each other. Although, in such a case, the applicant's fee payment obligations would be unaffected.

In the event that the applicant wishes to file for a Patent Cooperation Treaty, a request for examination must be submitted within 48 months following the priority date.

The application must be published in the Patent Journal once a request for review of a Patent Cooperation Treaty application has been filed. Within one month after the request, the Controller normally assigns an Examiner to the application after it has been published. The Examiner is expected to investigate the application to which he has been assigned and then deliver an Official Report to the Controller, normally within one month. He cannot postpone this formal report filing for more than three months. After receiving the Examiner's Official

Report, the Controller works with the Applicant to communicate the report within the next month.

After the Controller has communicated the issues raised in the Examination Report to the Applicant, the Applicant has a 12-month deadline to reply to these issues. Under no circumstances will he be granted an extension of time. The application is reviewed by the Controller after the objections have been raised and approved. Any pre-grant oppositions are then dealt with. Following that, within six months of the application's publication, the Patent Office issues an intimation of acceptance of the application.

The Patent Journal announces a Grant of the Patent once the six months following the publication of the application have passed and the pre-grant oppositions have been resolved. Following that, a Letter Patent Document is issued.

The Patent Journal has published a grant of patent that is valid for 20 years from the date of international filings. Starting in the third year after the filing of an International Patent Application, the Grant of Patent must be renewed every year by paying a fee. The charge must be paid within three months of receiving such notice. Finally, after a Patent is granted, any items produced using the patented innovation must be labelled "Patented." On the Patented product, the number of the Patent must be given.

CONCLUSION AND RECOMMENDATIONS

The Patent Cooperation Treaty (PCT) ushered in a revolution in the realm of invention and creativity for inventors, and as a result, the PCT has been a huge success and continues to develop around the world. It boasts a global membership of 148 Contracting States and millions of inventors, both large and small, who contribute to the growth of technology around the world by using the PCT and national patent systems. The PCT revolutionised the process of obtaining patents throughout the world. The PCT's time delay function preserves a user's patent possibilities while also delaying fees and giving them more time to secure financing and evaluate commercial, licencing, and collaboration opportunities.

The PCT assists the user in obtaining patents for his or her idea (s). It is the greatest alternative for acquiring a patent on a global scale for the clever Patenting Solution - Applicant.

Following are the recommendations by the researcher

1. It is critical that the PCT system continues to be relevant to the needs of applicants and national offices.
2. Over the years, legal improvements have been made to further streamline the PCT system's functioning.
3. Information technology has been implemented, resulting in increased efficiency and lower costs for applicants, national offices, and the WIPO International Bureau.
4. The PCT system's operations and performance should be periodically examined and evaluated in light of the business needs and experiences of applicants, national offices, and the WIPO International Bureau.
5. PCT should work to promote international cooperation so that more technological advancements may be made and inventors can be inspired to create innovative inventions.
6. PCT should also provide financial incentives to those inventors whose inventions are truly groundbreaking, so that further technological progress can be made.