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Registration of Patents in India

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ABSTRACT

This article provides a comprehensive guide to the registration of patents in India, covering the legal framework, procedural requirements, and practical considerations for inventors and businesses. Beginning with an overview of the types of patents recognized in India, including utility, design, and plant patents, the article delves into the essential prerequisites for patent registration, such as novelty, inventive step, and industrial applicability. The patent application process is outlined step by step, from conducting a patent search and preparing the application to filing, examination, publication, and grant. Additionally, the article explores the maintenance obligations associated with patents, including payment of renewal fees and the requirement for working the patent in India. Enforcement mechanisms for patent rights, including civil and criminal remedies for infringement, are also discussed. By offering practical insights and guidance, this article aims to empower inventors and innovators to navigate the complexities of the patent registration process in India effectively, thereby safeguarding their intellectual property rights and fostering innovation and economic growth.

Keywords: Registration, Patents, India.

I. INTRODUCTION

Patents serve as a crucial tool for innovators and creators to protect their intellectual property rights. In India, the process of registering patents is governed by the Patents Act, 1970, and is administered by the Indian Patent Office. This article aims to provide a comprehensive overview of the procedures and requirements involved in registering patents in India, shedding light on the intricacies of patent law and its implications for inventors and businesses.

(A) Meaning of the term patent

A patent is a legal document granted by the government, which gives the inventor the exclusive right to manufacture, use, sell, or distribute the invention for a limited period, typically 20 years from the date of filing the application. In India, patents can be granted for inventions that are new, involve an inventive step, and are capable of industrial application.

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II. TYPES OF PATENTS

In India, patents are classified into three main categories:

Utility Patent-These patents protect new and useful processes, machines, manufactures, or compositions of matter. Utility patents cover a wide range of innovations, including technological advancements, chemical formulations, and industrial processes.

Design Patent- Design patents safeguard the unique appearance or ornamental features of a product. Design patents are granted for the visual aspects of a product, such as its shape, configuration, or surface ornamentation, rather than its functional features.

Plant Patent - These patents are granted for new and distinct varieties of plants, including genetically modified organisms (GMOs). Plant patents are crucial for the agricultural sector, enabling breeders to protect their novel plant varieties and innovations in crop breeding.

III. REQUIREMENTS OF PATENT REGISTRATION

Novelty: The invention must be novel, meaning it should not have been disclosed or published anywhere in the world before the filing date of the patent application. Inventors are advised to conduct a thorough search of existing patents and literature to ensure the novelty of their invention.

Inventive Step: The invention must involve an inventive step, which means it should not be obvious to a person skilled in the relevant field of technology. Inventors are required to demonstrate that their invention represents a significant advancement over existing knowledge or practices.

Industrial Applicability: The invention must be capable of being made or used in some kind of industry. This requirement ensures that patents are granted for inventions with practical utility and economic significance.

IV. PATENT APPLICATION PROCESS

The process of patent registration in India involves the following steps:

Patent Search: Before filing a patent application, it is advisable to conduct a comprehensive search to ensure that the invention is novel and not already patented by someone else. Patent searches can be conducted online through databases provided by the Indian Patent Office or with the help of professional patent search firms.

Preparation of Patent Application: The next step involves drafting a patent application, which includes a detailed description of the invention, along with drawings (if applicable), and claims

defining the scope of protection sought. The patent application must be drafted with precision and clarity to accurately capture the inventive concept and meet the requirements of patent law.

Filing of Patent Application: The patent application can be filed either online or physically at the Indian Patent Office, along with the prescribed fees. The application must include all necessary documents and information required by the Patent Office, including details of the inventor(s) and a complete description of the invention.

Examination: After filing the application, it undergoes a thorough examination by the Patent Office to determine its patentability. The examination process may involve responding to any objections raised by the examiner. The examination process may involve reviewing the patentability criteria, conducting prior art searches, and assessing the novelty and inventive step of the invention. If the examiner raises any objections or issues, the applicant is given an opportunity to respond and address them.

Publication: Once the patent application is found to be in order, it is published in the Official Journal of the Patent Office. Publication of the patent application enables third parties to review the invention and file any opposition or observations if they believe that the invention does not meet the patentability criteria.

Opposition: After publication, there is a provision for third parties to oppose the grant of the patent within a specified period. Any person interested can file a pre-grant opposition, raising objections to the patentability of the invention on various grounds, such as lack of novelty, inventive step, or industrial applicability. The opposition proceedings provide an opportunity for interested parties to challenge the grant of a patent and ensure that only genuinely patentable inventions receive protection.

Grant of Patent: If the patent application meets all the requirements and no opposition is filed, the Patent Office grants the patent, and the inventor is issued a Letters Patent. The grant of a patent confers exclusive rights to the inventor, enabling them to prevent others from making, using, selling, or importing the patented invention without their consent.

V. MAINTENANCE OF PATENT

After obtaining a patent, certain obligations need to be fulfilled to maintain its validity:

Payment of Annual Renewal Fees: The patentee is required to pay annual renewal fees to keep the patent in force for the entire duration of its term. Failure to pay the renewal fees can result in the patent lapsing and losing its legal protection.

Working of Patent: The patentee must ensure that the patented invention is worked in India to

the fullest extent possible. Failure to do so may lead to compulsory licensing or revocation of the patent. Working of the patent refers to the commercial exploitation of the invention in the Indian market, either by manufacturing the patented product or licensing it to others for production. Failure to work the patent within the prescribed period may lead to compulsory licensing or revocation of the patent.

VI. ENFORCEMENT OF PATENT RIGHTS

Patent rights are enforceable through civil remedies such as injunctions, damages, and accounts of profits in case of infringement. Additionally, criminal remedies such as fines and imprisonment are also available for acts of patent infringement. Additionally, criminal remedies such as fines and imprisonment are also available for acts of patent infringement. The patentee can initiate legal proceedings against infringers to protect their rights and seek appropriate remedies for the infringement.

VII. CONCLUSION

Registering a patent in India involves a systematic and meticulous process governed by the Patents Act, 1970. By understanding the requirements and following the prescribed procedures, inventors can secure their intellectual property rights and benefit from their innovations. It is advisable to seek professional guidance from patent attorneys or agents to navigate through the complexities of the patent registration process and ensure the best possible protection for inventions. Patents play a vital role in promoting innovation, technological advancement, and economic growth and it is essential for inventors to take proactive steps to protect their inventions and leverage their intellectual property assets for commercial success.
