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Patent law: A bane or boon for the developing countries

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Abstract---Intellectual property is a tangible property which is protected from infringement by others till the longevity of that IPR. Intellectual property rights (IPR) are being defined as any creative ideas, new inventions, and creative expressions based on which certain rights are being provided to the actual owner and creator to bestow the status of property to reap the monetary benefits from it and also grant some license to others for arising more benefits. With the development of technology, it's being very easy to acquire any confidential information about any IPR application. IPR protection may give exclusive rights to the actual owner and also create a monopoly on that subject matter for a certain period. Law of patent provide protection for new Inventions who fulfill the criterial of Novelty, Non-obviousness and Industrial application. this protection allowing him/her to include or exclude other person for using, selling the patented invention. This paper also addresses the effectiveness of the international agreement like TRIPS and Patent cooperation treaty, also the Usage of patented products in sports to enhance their performance, those patented products not only create inequality among the players but also creates unfair competition amongst them. When someone goes for Patent registration then what rights may be given to the actual owners are also being discussed. Furthermore, this

paper also discusses the patent system and how it helps in the development of any developing nation also what are the lacunae in the current patent system.

Keywords---patent, intellectual property, tangible property, patents in sports, TRIPS.

Introduction

Patent law is a part of Intellectual Property Rights under which an exclusive right is granted for an invention. In other words, it is a way to offer a new technical solution for a problem. It is a right granted by the sovereign state for a certain time for an inventor in exchange for detailed public disclosure of an invention. The first agreement on the patent is the 1883 convention of Paris which applies to industrial property, which includes Patents, Designs, Registered Marks, Geographical Indications. This agreement ensures every inventor protects their IP rights in other nations. The provisions in the agreement have 3 main parts mentioned below;

- **National Treatment:** This convention ensures that every party to the contract may protect the IP rights of every individual in their nation as it was Created on their own.
- **Right of Priority:** it means that the applicant may file a first application in one of the contracting states, may file the same application in other states within 12 months. The advantage of these principles is that it's not necessary to apply the same dates in other contracting states to seek protection.
- **Common Rules:** These rules protect the applicant while applying Patents granted in different Contracting nations for the same invention are not dependent on each other, patent granting in one nation does not mandate on another nation to grant a patent. Every nation has its discretion to grant a patent.

The other International Agreement on patent is Patent Cooperation Treaty, 1970 (PCT). This agreement lowers the hassle of filing multiple applications by a single individual in every contracting state. Single Applications have the same effect in 120 contracting states (Rentsch Partner, n.d.). The next in Line the Important agreement is Trade-Related Aspects of Intellectual Property Rights (TRIPS). Trips agreement encourages the investment in IPR sector. Developing countries must adhere to the provisions of TRIPS because the infringement of IPR is most in the Developing countries as their laws are not viable enough to protect the same. From 1988-1995 around 425 billion, \$ of investment happened in those countries where the Provisions in their domestic law have been incorporated as per TRIPS, and tremendous growth would be seen. Along with that, a flexible period is provided for the developing countries to comply with the same in regards to technology, and for most developing countries a five-year transitional period for product patents in fields of technology.

Grant of the patent includes more than claims in a single right. “A form of protection that provides a person or legal entity with exclusive rights for making, using or selling a concept or invention and excludes others from doing the same for the duration of the patent (Patents).” The patent is a right granted by the competent authority to an inventor to enjoy exclusive rights on his new invention for a fixed period, sometimes the patent may also be given on improvements in an existing invention (Jayant Bhatt). The idea behind granting the patent is to give special rights to the inventor in the field of technology to promote research and invention in the technical field. This right creates fair competition among the inventors and this is the reason that not every improvement gets the patent. In the United States (U.S) the patent is given by U.S. Patent and Trademark Office (PTO) for a fixed term of 14 to 20 years.

Inventor alone has a Right to apply for a patent, but only in the case of more than one inventor, the law has provisions for their protection under patent law. Design, utility, and Plant patent are types of patents in the law i.e., in the U.S., Design patent protection is provided for ornamental or appearance inventions for 15 years under Section 35 U.S.C. 173, Whereas under utility patent protection is provided for function or method of the invention for 20 years under section 35 U.S.C. 154. Owning a patent restricts others from inventing, using, or selling an invention without the permission of the actual patent holder.

Literature

The United States Patent and Trade Mark Office (USPTO) has received more than 3,50,000 patent applications and around half of a million are pending review. Patents are used to reach cross-license agreements with firms that lack patents. The Economic expert contended that developing countries have been peevish about American policies who trying to export its tough intellectual property protection regime. The professors from Princeton have asked for a pre-grant opposition period when the other parties have knowledge about 'prior art' that would nullify the patent (Patent Boon or Bane, 2004). IPR protection may help to get the proper channelization of incentives for the owners and developers of innovations that improve quality and productivity. If productivity is increased initially in Developing countries, IPR protection may result in to rapid growth in the supplying of this innovative machinery to developing countries. If the rate is fast enough, then the developing countries may grow faster economically, and allow them to improve their living standards, and development even after the price is a bit higher require to get for patented technologies (Diego Valderrama, 2004). Patents are not necessary to provide protection for the innovation of new technologies because sometimes replicating new technology is often more expensive and time-consuming.

As a result, the creator has invested to find buyers to sell his/her product at cheap prices and earn short-term profits from it without getting a patent (Boldrin and Levine 2002). There are certain agreements in the history of an international regime to design protection of IPR across international limits. The Paris Convention of 1883 is for the Protection of IP and afterward, the Berne Convention for the Protection of Literary and Artistic Works is a primary pact of

international border IPR protection till the WTO was came into existence. The Paris Convention recognized basic principles for IP (patents) protection and called for national treatment, priority, and common rules of patents amongst signatory countries (Ryan Cardwell. and, Pascal L. Ghazalian, n.d.). Usage of the patented products in sports increased nowadays which may increase the enhancement of athletes during sports and create inequality among the players. The best example of it is a swimming suit during a swimming competition to reduce the resistance of water to the body to swim freely with fewer efforts from the body which gives the best result to any athlete (, Benjamin S. Roberts and et al.).

Historical aspects of patent

Monopoly over patent is not a new concept it has roots in ancient years. The first similar to patent rule was found in Greece by Athenaeus of Naucratis in the late second century A.D (Michael Witty). Athenaeus, who was a Greek scholar who wrote about Greek cultures, noted about the city of Sybaris (ca. sixth century B.C.) held a feast, where the city has its own certain laws regarding the celebrations. one of among many laws specified about chefs who cook food for the celebrations, and “When one of the cooks by his own intellectual cooked a very delicious dish, then no other cook was allowed to make and use of that dish till the end of a year, only the inventor himself has a right during that year that he would arise the profit from that dish.” In Venice, the first patent was issued in 1416 from the Great Council of Venice to Ser Franciscus Petri for a period of 50 years (Stefania Fusco n.d.). Petri, a resident of Rhodes and a foreigner, invented a new device that changed wool into felt, and his patent was known to “right to exclude.” The first patent in the U.S was granted on 1790, July31 to Samuel Hopkins for the development of the manufacture of potash, an essential component used in agriculture compost. Then-President George Washington signed the first patent in the U.S. The first patent application in India was made by George Alfred De Penning for a patent for "A punkah pulling machine" in India in the year of 1856, march 3.

Test to check whether an invention fulfill the criteria's of obtaining the patent

Patent provided to the inventor to claim their invention on their name. The grant of a patent may not be refused, and a patent may not be invalidated, on the ground that the sale of the patented product, or a product obtained through the patented process, is subject to restrictions or limitations resulting from the domestic law. For granting the Patent the invention must fulfill the test.

- Statutory-class test.
- Utility test.
- Novelty test.
- Un-obviousness test.

The patent law of 1790 would be broadly imitated. The law, be that as it may, did not set up a different office or executive to grant licenses. Rather, inspecting and granting licenses was viewed as low maintenance work that the secretaries of war

and state and the lawyer general could perform in their extra time. It was dependent upon them to give licenses, choosing either by and large or exclusively. Secretary of State Thomas Jefferson, himself a creator, had maybe the quickest enthusiasm for this sideline. Be that as it may, soon he, as well, was immersed, bringing numerous open dissensions about the gradualness and unwieldiness of the protection procedure. Regardless, in three years, 57 patents were issued for such creations as sort punches, a machine for assembling nails, and different steam-control developments.

To streamline the protecting procedure and cut down on the time it took to grant licenses, Congress passed another law in 1793 that adequately invalidated the past one. This law was firmly second rate compared to the one it supplanted since whatever it did was require a man to enroll an innovation without the stipulation that it be inspected and resolved to be unique or valuable. While this unquestionably disentangled the protecting procedure, it opened the entryway for a wide range of sophistry, which offered ascend to a substantial number of claims. For the following couple of decades, be that as it may, this law stayed in compel, until the point when a kickback created a transformed and more grounded patent law in 1836.

The new law restored the necessity that a creation's innovation must be demonstrated, which generally was a repetition of the 1790 patent statute. The 1836 form, nonetheless, separated itself from its forerunner by its arrangement for a different patent department with its staff that worked all day on patent preparing. While Congress in 1802 had made a discrete patent office inside the State Department, this one-individual office was ordered to do minimal more than enroll licenses. Subsequently, the 1836 transformed patent statute set up what added up to a modern patent office, headed by a magistrate of licenses; and out of the blue, a creator had the privilege to request if his patent application was rejected. This new law re-established the 1790 patent statute's liberal position toward remote creators, who were by and by qualified for licenses. As in the 1790 and 1793 laws, the creator, and not the first to record an innovation, had the sole idea to apply for a patent. That implied that a creator could uninhibitedly stable out her thoughts or endeavor the commercialization of her innovation as long as this happened inside a year of the principal documenting date of her patent application.

Indeed, even by twentieth-century principles, the 1836 patent statute introduced a modern arrangement of patent preparing that was liberal in the application, ensuring the innovations of outsiders and also subjects of the United States for a time of 14 years and giving them the privilege of the bid. While the law would be superseded by another law in 1870 and by the codification of 1952, these later laws would join the highlights of the 1836 statute. Different changes in patent law happened in 1842 when configuration licenses were conceded out of the blue; and 1861, when the 14-year restriction on a patent was stretched out to the present seventeen years. In 1930, plant licenses became effective, while in 1952, every single patent law was arranged.

Patent as boon

The main patent was conceded on July 31, 1790, to Samuel Hopkins for a technique for delivering potash (potassium carbonate). The most punctual law required that a working model of every creation be submitted with the application. Patent applications were analyzed to decide whether a designer was qualified for a patent. The development of the countries depends on various factors in which economic growth is one of them. Some have argued that protection for Intellectual Property is the main component of current economic policy. Protection of Patents would also enhance affordability in the world market and accelerate economic development for developing countries. Developing countries must amend their laws to develop and promote IPR rights.

Economic Benefit

The exact idea of the connection between IPRs and financial improvement is hazy. The principles issue isn't regardless of whether IPRs can assist monetary improvement. More dubious is the degree to which IPR frameworks ought to be permitted as they were before TRIPS to change as indicated by the levels of advancement and mechanical independence that individual creating nations have come to. The issue here is whether a moderately stringent IPR administration (as encapsulated by TRIPS) will best energize financial development in all nations, or whether a more adaptable one might be more fitting for some of them. Created nations and business affiliations, whose individual's advantage specifically from viable IPR administrations, tend to embrace the main position. They contend that solid IPR enactment will empower creating nations to pull in the greater venture since remote organizations will be hesitant to put resources into a nation where their innovation may be replicated with little reward and will along these lines increase enhanced access to new advances presented from outside. Creating nations would likewise be urged to produce more advancements of their own, because of the prizes to designers and trend-setters offered by the IPR framework.

Most of the nations expressed their concern about the provisions mentioned in TRIPS is too high to follow in developing countries, exclusively for patents, is too high to comply with it. The main issue in this is to extending IPR protection in the field of biotechnology will only provide benefits to the developed nations as there is no such technology available in the developing countries, and if the IPR protection may be provided in such case then the scope of developing in the field of IPR for developing countries would become more difficult. Patents are also beneficial for international companies by providing a system for knowledge internationally through licensing agreements. The grant of licenses to international companies to exploit locally developed inventions provides returns to inventors and access to foreign markets. The grant of licenses to international companies to manufacture inventions developed overseas can improve the skill and know-how within the Australian community.

The United States was so far ahead in its patent application procedure in the 19th century that in 1869 the Patent Office issued seven times as many patents (13,997) than Great Britain, which at that time was considered the world's

'workshop'. The types of inventions no doubt presaged this country's industrial supremacy in the 20th century. Some of the most notable patents were the steam-powered engine (1811), the mechanized reaper (1834), the telegraph (1840), the sewing machine (1846), the typewriter (1868), the telephone (1876), the phonograph (1878), the electric light bulb (1880), and the motion picture projector (1893). Eli Whitney's cotton gin went into use in the first half of the 19th century but was patented in 1794.

In addition, Charles Goodyear's vulcanization of rubber an example of a process, rather than an instrument or object received a patent in 1844 and later made the modern bicycle and car tire possible (Patent Law). Giving solid patent insurance will empower patent holders in developing nations to go into permitting understandings since generation costs in most creating nations are lower than in developed nations. Protection of Patents may have adverse economic effects. The inclusion of License fees may increase the price of goods and services that utilize the patented invention. There are other expenses as well for seeking the grant of a patent and enforcing patent rights. Application Fees must be paid before the filing of a patent application then only a patent will be granted. Asserting patent rights, or challenging those of a competitor, may be costly and difficult for small and medium-sized enterprises because claims of infringement may need to be pursued through the courts. Patents may also have adverse effects on the balance of payments, especially for countries like Australia, which are net importers of intellectual property. This is because expenditure on license fees or royalties for the use of patents owned by foreign entities may exceed the income earned from the use, by foreign entities, of local inventions.

Sharing of knowledge

Patents advance information sharing by requiring the points of interest of the protected development to be put in the general population space as a result of the selective appropriate to abuse the creation. Without this trade, innovators may secure the points of interest of new creations through mystery. The revelation prerequisites of the patent framework depend on the possibility that 'logical and specialized receptiveness benefits the advance of society more than doing privacy and mystery. By empowering information sharing, licenses diminish the duplication of inquiring about exertion and urge analysts to expand on existing innovations. Analysts may think about a protected item and discover approaches to enhance it. Access to licensed creations may likewise encourage exploration that would not something else be conceivable. For instance, access to a protected research instrument may empower key to examine the reasons for a hereditary issue and prompt the production of a hereditary test or treatment. This examination might not have happened if the instrument had stayed a mystery. Because of the aggregate idea of much hereditary research, information sharing might be especially vital in this unique circumstance.

However, patents may likewise repress examine by demoralizing learning sharing before petitioning for patent insurance. The aftereffects of new research might be withheld until the point that an innovator is in a position to apply for a patent and the creation is adequately all-around created to guarantee that the patent will

be allowed. Innovation does not exclusively create financial advantages. It is an essential instrument for shutting the hole of mechanical data, which is pivotal to the socio-economic improvement of creating nations. More grounded patent-protection frameworks assume a significant part in pulling in mechanical data exchange from created countries. Gaining access to the most recent innovation will encourage higher monetary development rates. Providing solid patent insurance to the proprietor of cutting-edge innovation will secure the accessibility of that specialized information for creating nations. This produces monetary advantages as well as orderly social advantages to Improve the Quality in the Country. And, to enhance personal satisfaction and to expand household work openings, creating nations should try to utilize the underlying exchange of innovation from created nations to begin advantageous innovation broadly. Creating nations ought to rebuild their patent-protection frameworks with the goal that they give more grounded patent assurance to outside innovators and lift the building nations' own particular technology-based financial development. Over the long haul, this will enhance personal satisfaction in creating nations, which thus will urge capable people to stay and work in their nations of origin and will cultivate innovative improvements and speculations.

Advancement profits the group keeping toward making new Furthermore enhanced products and benefits that help social necessities. Licenses Push improvement through those to give about restricted monopolies, concerning illustration A reward will innovators to the time, exertion Also creativity put resources into making new results Furthermore forms. That possibility for monetary returns includes an impetus of the accepted remunerates from claiming exploratory innovation, for example, academic distinguishment what's more advancement inside investigate establishments. Without those motivations furnished by patents, private gurus might be hesitant to invest, bringing about more excellent calls concerning administration subsidizing alternately a disappointment to create Furthermore misuse new engineering. Those parts of licenses similarly as a motivator to improvement What's more venture done exploration might have been generally recognized clinched alongside submissions, including by research Furthermore social insurance associations.

Patent as bane

Granting of a patent is the monopoly right given to exploit an invention to its maximum use for the benefit of the patentee. Patent trolls for the most part assemble a vast arrangement of licenses, which developed countries buy from organizations that are leaving the business, from firms that have created an innovation that they don't mean to seek after on a specific innovation, or from people who are deficient with regards to assets to build up their developments or thoughts. Further, the trolls search for effective items that utilization the innovation secured by their licenses and request an authorizing expense. Since patent suits are costly to safeguard, the objective organization is regularly ready to settle out of court. Trolls aggregate licenses identified with an objective organization. By acquiring numerous licenses concentrated on one zone, they can raise such a large number of events of conceivable encroachment which additionally makes it harder and more costly for the objective organization to

guard the suit. They likewise sue different respondents with the goal that the legitimate cost per litigant is diminished however makes for a substantial general potential payback.

Then again, as an issue of training, legal counselors are paid on a possibility premise they are just paid on the off chance that they win the case. That decreases the cost further for the trolls. Then again cost for the blamed infringer is high as can be and if they endeavor to battle the case, there is no speedy method to end the suit and make progress in the case. The patent trolls may likewise guarantee an offer in all-out income from the item even though licenses may cover just a little part of the innovation. The honor can add up to millions for a fruitful item. Around 97 percent of infringement of IPR suits filed in the U.S. are settled outside the court despite the merits of the case and the cost incurred in patent litigation. In addition to the list of advantages, if a defendant company loses a suit, it may be liable for treble damages in a case of willful infringement. As a result, the defaulter may be a burden for fighting the court case, and outside the court, the settlement will help to lower the burden.

Even India now faces the commitment to agree to an administration of item licenses instead of the present arrangement of process licenses. Under Indian law, the procedure patent ensures the assembling procedure. An adversary can utilize an alternate assembling procedure and market the item. The item patent bans an adversary from assembling or advertising items made through various procedures, and this imposing business model accumulates to patent proprietors for a long time, prompting unconscionably high costs, particularly in the pharmaceutical, rural, and sustenance preparing areas, what with the progressed modern nations holding 97% for every penny of all licenses worldwide and 90% for every penny of all innovation licenses. The debate is on for pre-grant opposition procedure which may hinder the frivolous patents in India. Being a developing country, the interest of the poorer sections will suffer always.

Thus, allowing and implementation of licenses are represented by national laws, and by global settlements, where those arrangements have been given an impact on national laws. Licenses are conceded by national or provincial patent workplaces. A given patent is along these lines helpful for securing a creation in the nation in which that patent is allowed. At the end of the day, patent law is regional. At the point when a patent application is distributed, the innovation uncovered in the application winds up earlier workmanship and enters people in the general area (if not secured by different licenses) in nations where a patent candidate does not look for insurance, the application in this manner, for the most part, getting to be earlier craftsmanship against anybody (counting the candidate) who may look for patent assurance for the creation in those nations. Regularly, a country or a gathering of countries shapes a patent office with obligation regarding working that country's patent framework, inside the significant patent laws. The patent office by and large has a duty regarding the give of licenses, with encroachment being the dispatch of national courts. The specialist for patent statutes in various nations shifts.

The expenses of getting ready and recording a patent application, indicting it until the point when allow and keeping up the patent change starting with one ward then onto the next, and may likewise be needy upon the sort and many-sided quality of the creation, and on the kind of patent. Low quality, definitely known or evident licenses hamper development and commercialization. Blocking the utilization of central learning with licenses makes a "catastrophe of the ant commons, where future advancements can't occur outside of a solitary firm in a whole field. Licenses debilitate the general population space and development that originates from it. Patent bushes, or "a covering set of patent rights", specifically, moderate advancement.

Usage of patented product in sports

Some sports have history of using some gadgets/ inventions which enhance the performance of the athletes. The most important and relevant example is of cork Swim Suit. Olympics of 2008 in Beijing made renounced by Michael Phelps by winning 8 medals in the Olympics in swimming. In the same year every swimmer won the medals. After this event, the swimsuit was banned to use in the games. Speedo's development staff started brainstorming new ways to assist swimmers go faster in 2009. Polyurethane bodysuits, which had contributed to an incredible number of world records in swimming over the previous 18 months, had been prohibited. To think beyond the box, the Speedo reps got together outside of the lab, with academics, coaches, and research consultants at hotels, conference centres, and even an English country house to produce ideas, ideas that were more Captain Avenger than Mark Spitz inspired. Joe Santry, the research manager for Speedo's Aqualab in Nottingham, England, adds, "A lot of talk was made around wild and ridiculous ideas." "Some of the early drawing concepts presented looked like a superhero suit with a sleek cap, goggle, and suit combination that wouldn't seem out of place in a Marvel comic." They were attempting to develop a replacement for the now-famous full-body LZR suit. The "rubber suit" compressed a swimmer's body into a streamlined tube, trapping air and increasing buoyancy and reducing drag.

Suggestions and Conclusions

Based on the above arguments, the result comes out that even the patent trolls are a noteworthy risk in numerous nations they are not a suitable alternative to working. There are many possible advantages and disadvantages of patents. As per the first meaning of the expression "patent", licenses are proposed to encourage and energize divulgence of advancements into general society area for the benefit of all. Along these lines licensing can be seen as adding to open equipment after a ban period (more often than not of 20 years). On the off chance that creators did not have the lawful assurance of licenses, much of the time, they may lean toward or tend to keep the mystery of their development. Granting licenses, by and large, makes the subtle elements of innovation openly accessible, for misuse by anybody after the patent lapses, or for promoting change by different innovators. Moreover, when a patent's term has terminated, the general society record guarantees that the patentee's development isn't lost to mankind.

Licenses give motivation to financially proficient innovative work. An investigation led every year by the IPTS demonstrates that the 2,000 biggest worldwide organizations put more than 430 billion euros in 2008. If the ventures can be considered as contributions of R&D, genuine items and licenses are the yields. In numerous ventures (particularly those with high settled expenses and either low minor expenses or low figuring out costs PC processors, and pharmaceuticals for instance), once an innovation exists, the cost of commercialization (testing, tooling up a manufacturing plant, building up a market, and so on.) is significantly more than the underlying origination cost.

One of the fundamental elements of the patent framework is to cultivate mechanical advancement by giving a motivator to innovative work. The patent framework additionally attempts to disperse specialized data and advance innovation exchange. Patent Landscape Reports depict the patent circumstance for a particular innovation in a given geological zone. Our reports separate and examine key data from patent scans for less demanding representation and comprehension. The Inventor Assistance Program matches creating nation creators and private ventures with restricted money-related means with patent lawyers, who give expert Bono lawful help to secure patent assurance.

Improvement is a slow procedure. Consolidating the new standards and controls of the TRIPS Agreement into the national patent frameworks of creating nations could be the underlying advance toward transforming patent-protection frameworks. National pioneers from creating nations should set up a board of trustees for investigating the advantages and disadvantages of improving patent assurance frameworks, and after that advance toward rebuilding those frameworks to advance further improvement in their developing economies. Creating nations should see the patent-protection framework as a device for monetary advancement.

Another impact of current patent utilization is to both empower and boost contenders to plan around the licensed innovation. This may advance sound rivalry among makers, bringing about continuous enhancements of the innovation base. This may help enlarge national economies and present better expectations for everyday comforts to the natives. The fast advancement of the Indian pharmaceutical industry since the mid-1970s features the way that the outline of the patent demonstration was instrumental in building nearby capacities even in a creating nation like India. A patent can be kept alive just by paying the reestablishment expense occasionally. Additionally, if there should arise an occurrence of any change in or alteration of a past development officially protected, a patent called patent of option might be gotten. The term of the patent of the expansion will run simultaneously and end with the primary patent. No recharging expense is payable insofar as the patent stays in the drive. By all such arguments, it is clear that a patent law for any country work as a bane. And to maintain this effect there are treaties and conventions but at the world level, such treaties and conventions need some changes and a proper mechanism for their proper implementation.

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