The Patents Act, 1970

Act 39 of 1970. 175 sections. Bare Act with the official footnotes.

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Every section online, with the old and new law side by side and exam questions: https://www.lawmaker.in/bare-acts/patents-act-1970

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[19th September, 1970.]

An Act to amend and consolidate the law relating to patents.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Section 1. Short title, extent and commencement

(1) This Act may be called the Patents Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

[1] 1-4-1978, vide notifin. No. S.O. 799, dated 10-3-1978, in respect of the provisions of sub-section (2) of s. 12 and sub-section (2) of s. 13, s. 28, s. 68, and ss. 125 to 132 see Gazette of India, Part II, sec. 3 (ii). 20-4-1972 vide notifin. No. S.O. 300 dated 20-4-1972, in respect of the provisions [except sub-section (2) of s. 12 and sub-section (2) of s. 13, s. 28, s. 68 and ss. 125 to 132] see Gazette of India, Part II, sec. 3 (ii).

Section 2. Definitions and interpretation

(1) In this Act, unless the context otherwise requires,-

[1][[2]* * * *;

(ab) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;

[3][(aba) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;]

(ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;]

(b) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;

(c) "convention application" means an application for a patent made by virtue of section 135;

[4][(d) "convention country" means a country or a country which is member of a group of countries or a union of countries or an Inter-governmental organisation [5][referred to as a convention country in section 133;]

(e) "district court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (5 of 1908);

(f) "exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and "exclusive licensee" shall be construed accordingly;

[6]* * * * *

(h) "Government undertaking" means any industrial undertaking carried on-

(i) by a department of the Government, or

(ii) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the Government, or

(iii) by a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), [7][or]

[7][(iv) by an institution wholly or substantially financed by the Government;]

[8]* * * * *

[9][(i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;]

[10][(ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;]

[11][(j) "invention" means a new product or process involving an inventive step and capable of industrial application;

[12][(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;]]

(k) "legal representative" means a person who in law represents the estate of a deceased person;

[13][(l) "new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art;

(la) "Opposition Board" means an Opposition Board constituted under sub-section (3) of section 25;

(m) "patent" means a patent for any invention granted under this Act;]

(n) "patent agent" means a person for the time being registered under this Act as a patent agent;

(o) "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force;

[10][(oa) "Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time;]

(p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;

(q) "patent of addition" means a patent granted in accordance with section 54;

(r) "patent office" means the patent office referred to in section 74;

(s) "person" includes the Government;

(t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;

[14][(ta) "pharmaceutical substance" means any new entity involving one or more inventive steps;]

[15][(u) "prescribed" means,-

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court;

[16]* * * * *

(C) in other cases, prescribed by rules made under this Act;]

(v) "prescribed manner" includes the payment of the prescribed fee;

(w) "priority date" has the meaning assigned to it by section 11;

(x) "register" means the register of patents referred to in section 67;

(y) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.

(2) In this Act, unless the context otherwise requires, any reference-

(a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73;

(b) to the patent office shall be construed as including a reference to any branch office of the patent office.

[1] Subs. by Act 38 of 2002, s. 3, for Cl. (a) (w.e.f. 20-5-2003).
[2] Cl. (a) omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).
[3] Ins. by Act 15 of 2005, s. 2 (w.e.f. 1-1-2005).
[4] Subs. by Act 38 of 2002, s. 3, for clause (d) (w.e.f. 20-5-2003).
[5] Subs. by Act 15 of 2005, s. 2, for "notified as such under sub-section (1) of section 133" (w.e.f. 1-1-2005).
[6] Cl. (g) omitted by s. 2, ibid. (w.e.f. 1-1-2005).
[7] Ins. by Act 15 of 2005, s. 2 (w.e.f. 1-1-2005).
[8] Certain words omitted by s. 2, ibid. (w.e.f. 1-1-2005)
[9] Subs. by s. 2, ibid., for clause (i) (w.e.f. 1-1-2005).
[10] Ins. by Act 38 of 2002, s. 3 (w.e.f. 20-5-2003).
[11] Subs. by s. 3, ibid., for clause (j) (w.e.f. 20-5-2003).
[12] Subs. by Act 15 of 2005, s. 2, for clause (ja) (w.e.f. 1-1-2005).
[13] Subs. by s. 2, ibid., for clauses (l) and (m) (w.e.f. 1-1-2005).
[14] Ins. by Act 15 of 2005, s. 2 (w.e.f. 1-1-2005).
[15] Subs. by Act 38 of 2002, s. 3, for cl. (u) (w.e.f. 20-5-2003).
[16] Sub-clause (B) omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).

CHAPTER II INVENTIONS NOT PATENTABLE

Section 3. What are not inventions

The following are not inventions within the meaning of this Act,-

(a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;

[1][(b) an invention the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;]

(c) the mere discovery of a scientific principle or the formulation of an abstract theory [2][or discovery of any living thing or non-living substance occurring in nature];

[3][(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation.-For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;]

(e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

(f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one

another in a known way;

[4]* * * * *

(h) a method of agriculture or horticulture;

(i) any process for the medicinal, surgical, curative, prophylactic [5][diagnostic, therapeutic] or other treatment of human beings or any process for a similar treatment of animals [6]*** to render them free of disease or to increase their economic value or that of their products.

[5][(j) 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 or propagation of plants and animals;

(k) a mathematical or business method or a computer programme per se or algorithms;

(l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

(m) a mere scheme or rule or method of performing mental act or method of playing game;

(n) a presentation of information;

(o) topography of integrated circuits;

(p) an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.]

[1] Subs. by Act 38 of 2002, s. 4, for cl. (b) (w.e.f. 20-5-2003).
[2] Ins. by s. 4, ibid. (w.e.f. 20-5-2003).
[3] Subs. by Act 15 of 2005, s. 3, for clause (d) (w.e.f. 1-1-2005).
[4] Cl. (g) omitted by Act 38 of 2002, s. 4 (w.e.f. 20-5-2003).
[5] Ins. by s. 4, ibid. (w.e.f. 20-5-2003).
[6] The words "or plants" omitted by s. 4, ibid. (w.e.f. 20-5-2003).

Section 4. Inventions relating to atomic energy not patentable

No patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962).

Section 5. Inventions where only methods or processes of manufacture patentable

[Inventions where only methods or processes of manufacture patentable.] Omitted by the Patents (Amendment) Act, 2005 (15 of 2005), s. 4 (w.e.f. 1-1-2005).

CHAPTER III APPLICATIONS FOR PATENTS

Section 6. Persons entitled to apply for patents

(1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,-

(a) by any person claiming to be the true and first inventor of the invention;

(b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

(c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person.

Section 7. Form of application

(1) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

[1][(1A) Every international application under the Patent Cooperation Treaty for a patent, as may be filed designating India, shall be deemed to be an application under this Act, if a corresponding application has also been filed before the Controller in India.]

[2][(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.]

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there

shall be furnished with the application, or within such period as may be prescribed after the filling of the application, proof of the right to make the application.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the [3][person] claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

[4][(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.]

[1] Ins. by Act 38 of 2002, s. 6 (w.e.f. 20-5-2003).
[2] Ins. by Act 15 of 2005, s. 5 (w.e.f. 1-1-2005).
[3] Subs. by s. 5, ibid., for "owner" (w.e.f. 1-1-2005).
[4] Subs. by s. 5, ibid., for sub-section (4) (w.e.f. 1-1-2005).

Section 8. Information and undertaking regarding foreign applications

(1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application [1][or subsequently [2][within the prescribed period as the Controller may allow]]-

[3][(a) a statement setting out detailed particulars of such application; and]

(b) an undertaking that, [4][up to the date of grant of patent in India], he would keep the Controller informed in writing, from time to time, of [5][detailed particulars as required under] clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause within the prescribed time.

[6][(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of a patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.]

[1] Ins. by Act 38 of 2002, s. 7 (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 6, for certain words (w.e.f. 1-1-2005).
[3] Subs. by Act 38 of 2002, s. 7, for clause (a) (w.e.f. 20-5-2003).
[4] Subs. by Act 15 of 2005, s. 6, for "up to the date of the acceptance of his complete specification filed in India (w.e.f. 1-1-2005).
[5] Subs. by Act 38 of 2002, s. 7, for "details of the nature referred to in" (w.e.f. 20-5-2003).
[6] Subs. by Act 15 of 2005, s. 6, for sub-section (2) (w.e.f. 1-1-2005).

Section 9. Provisional and complete specifications

[1][(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.]

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications:

[2][Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.]

[3][(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.]

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before [4][grant of patent], cancel the provisional specification and post-date the application to the date of filing of the complete specification.

[1] Subs. by s. 7, ibid., for sub-section (1) (w.e.f. 1-1-2005).

[2] The proviso ins. by Act 15 of 2005, s. 7 (w.e.f. 1-1-2005).
[3] Subs. by s. 7, ibid., for sub-section (3) (w.e.f. 1-1-2005).
[4] Subs. by s. 7, ibid., for "the acceptance of the complete specification" (w.e.f. 1-1-2005).

Section 10. Contents of specifications

(1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished [1][before the application is found in order for grant of a patent], but such model or sample shall not be deemed to form part of the specification.

(4) Every complete specification shall-

(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;

(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) end with a claim or claims defining the scope of the invention for which protection is claimed.

[2][(d) be accompanied by an abstract to provide technical information on the invention:

Provided that-

(i) the Controller may amend the abstract for providing better information to third parties; and

(ii) if the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing [3][the material to an international depository authority under the Budapest Treaty] and by fulfilling the following conditions, namely:-

[4][(A) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period];

(B) all the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;

(C) access to the material is available in the depository institution only after the date of the application for patent in India or if priority is claimed after the date of the priority;

(D) disclose the source and geographical origin of the biological material in the specification, when used in an invention.]

[5][(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act.]

[6][(5) The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.]

(6) A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

[1] Subs. by s. 8, ibid., for "before the acceptance of the application" (w.e.f. 1-1-2005).
[2] Ins. by Act 38 of 2002, s. 8 (w.e.f. 20-5-2003).
[3] Subs. by Act 15 of 2005, s. 8, for certain words (w.e.f. 1-1-2005).
[4] Subs. by s. 8, ibid., for sub-clause (A) (w.e.f. 1-1-2005).

[5] Subs. by s. 8, ibid., for sub-section (4A) (w.e.f. 1-1-2005).
[6] Subs. by Act 38 of 2002, s. 8, for sub-section (5) (w.e.f. 20-5-2003).

Section 11. Priority dates of claims of a complete specification

(1) There shall be a priority date for each claim of a complete specification.

(2) Where a complete specification is filed in pursuance of a single application accompanied by-

(a) a provisional specification; or

(b) a specification which is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification,

and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed-

(a) in one of those specifications, the priority date of that claim shall be the date of the filing of the application accompanied by that specification;

(b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

[1][(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.]

(4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which sub-sections (2), (3), [1][(3A)], (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.

(7) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.

(8) A claim in a complete specification of a patent shall not be invalid by reason only of-

(a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or

(b) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

[1] Ins. by Act 15 of 2005, s. 9 (w.e.f. 1-1-2005).

CHAPTER IV PUBLICATION AND EXAMINATION OF APPLICATIONS

Section 11A. Publication of applications

[1][[2][(1) Save as otherwise provided, no application for patent shall ordinarily be opened to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.

(3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application-

(a) in which secrecy direction is imposed under section 35; or

(b) has been abandoned under sub-section (1) of section 9; or

(c) has been withdrawn three months prior to the period specified under sub-section (1).]

(4) In case a secrecy direction has been given in respect of an application under section 35, then, it shall be published after the expiry of the period [3][prescribed under sub-section (1)] or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section-

(a) the depository institution shall make the biological material mentioned in the specification available to the public;

(b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

[4][(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted:

Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1st day of January, 2005 shall accrue from the date of grant of the patent:

Provided also that after a patent is granted in respect of applications made under sub-section (2) of section 5, the patent-holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing the concerned product prior to the 1st day of January, 2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises.]

[1] Ins. by s. 9, ibid. (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 10, for sub-sections (1) to (3) (w.e.f. 1-1-2005).
[3] Subs. by Act 15 of 2005, s. 10, for "of eighteen months" (w.e.f. 1-1-2005).
[4] Ins. by s. 10, ibid. (w.e.f. 1-1-2005).

Section 11B. Request for examination

[1][(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.]

[2]* * * * *

[3][(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.]

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) [4]*** or sub-section (3), the application shall be treated as withdrawn by the applicant:

[5][Provided that-

(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and

(ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.]

[1] Subs. by s. 11, ibid., for sub-section (1) (w.e.f. 1-1-2005).
[2] Sub-section (2) omitted by s. 11, ibid. (w.e.f. 1-1-2005).
[3] Subs. by s. 11, ibid., for sub-section (3) (w.e.f. 1-1-2005).
[4] The words, brackets and figure "or sub-section (2)" omitted by s. 11, ibid. (w.e.f. 1-1-2005).
[5] Subs. by s. 11, ibid., for the proviso (w.e.f. 1-1-2005).

Section 12. Examination of application

[1][(1) When a request for examination has been made in respect of an application for a patent in the prescribed manner [2][under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller] to an examiner for making a report to him in respect of the following matters, namely:-

(a) whether the application and the [3][specification and other documents relating thereto] are in accordance with

the requirements of this Act and of any rules made thereunder;

(b) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;

(c) the result of investigations made under section 13; and

(d) any other matter which may be prescribed.

(2) The examiner to whom the application and the [3][specification and other documents relating thereto] are referred under sub-section (1) shall ordinarily make the report to the Controller within [4][such period as may be prescribed].

[1] Subs. by Act 38 of 2002, s. 10, for certain words (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 12, for certain words, brackets, figures and letter (w.e.f. 1-1-2005).
[3] Subs. by Act 38 of 2002, s. 10, for "specification relating thereto" (w.e.f. 20-5-2003).
[4] Subs. by Act 15 of 2005, s. 12, for "a period of eighteen months from the date of such reference" (w.e.f. 1-1-2005).

Section 13. Search for anticipation by previous publication and by prior claim

(1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification-

(a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;

(b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

(2) The examiner shall, in addition, make such investigation [1]*** for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.

(3) Where a complete specification is amended under the provisions of this Act before [2][the grant of a patent], the amended specification shall be examined and investigated in like manner as the original specification.

(4) The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

[1] The words "as the Controller may direct" omitted by Act 38 of 2002, s. 11 (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 13, for "it has been accepted" (w.e.f. 1-1-2005).

Section 14. Consideration of report of examiner by Controller

[1][Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

[1] Subs. by s. 14, ibid., for sections 14 and 15 (w.e.f. 1-1-2005).

Section 15. Power of Controller to refuse or require amended applications, etc., in certain cases

Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.]

Section 16. Power of Controller to make orders respecting division of application

(1) A person who has made an application for a patent under this Act may, at any time [1][before the grant of the patent], if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification, but such

complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

[2][Explanation.- For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period.]

[1] Subs. by Act 15 of 2005, s. 15, for "before the acceptance of the complete specification" (w.e.f. 1-1-2005).
[2] Subs. by s. 15, ibid., for Explanation (w.e.f. 1-1-2005).

Section 17. Power of Controller to make orders respecting dating of application

(1) Subject to the provisions of section 9, at any time after the filing of an application and [1][before the grant of the patent] under this Act, the Controller may, at the request of the applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

Provided that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

[2][(2) Where an application or specification (including drawings) or any other documents is required to be amended under section 15, the application or specification or other document shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification or other document is returned to the applicant, on the date on which it is refiled after complying with the requirement.]

[1] Subs. by s. 16, ibid., for "before acceptance of the complete specification" (w.e.f. 1-1-2005).
[2] Subs. by Act 38 of 2002, s. 13, for sub-section (2) (w.e.f. 20-5-2003).

Section 18. Powers of Controller in cases of anticipation

(1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated in the manner referred to in clause (a) of sub-section (1) or sub-section (2) of section 13, he may refuse to [1][the application] unless the applicant-

(a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or

(b) amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed,-

(a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or

(b) the complete specification is amended to the satisfaction of the Controller.

(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise,-

(a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and

(b) that such other complete specification was published on or after the priority date of the applicant's claim,

then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

[2]* * * * *

[1] Subs. by Act 15 of 2005, s. 17, for "to accept the complete specification" (w.e.f. 1-1-2005).
[2] Sub-section (4) omitted by Act 15 of 2005, s. 17 (w.e.f. 1-1-2005).

Section 19. Powers of Controller in case of potential infringement

(1) If, in consequence of the investigations required [1][under this Act], it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed-

(a) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or

(b) the complete specification is amended to the satisfaction of the Controller.

(2) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under sub-section (1)-

(a) that other patent is revoked or otherwise ceases to be in force; or

(b) the specification of that other patent is amended by the deletion of the relevant claim; or

(c) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention, the Controller may, on the application of the applicant, delete the reference to that other patent.

[1] Subs. by s. 18, ibid., for "by the foregoing provisions of this Act or of proceedings under section 25" (w.e.f. 1-1-2005).

Section 20. Powers of Controller to make orders regarding substitution of applicants, etc

(1) If the Controller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for the patent or by operation of law, the claimant would, if the patent were then granted be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless-

(a) the invention is identified therein by reference to the number of the application for the patent; or

(b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

Section 21. Time for putting application in order for grant

[1][(1) An application for a patent shall be deemed to have been abandoned unless, within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.

Explanation.-Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be

deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.

(2) If at the expiration of the period as prescribed under sub-section (1),-

(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.

(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.]

[1] Subs. by Act 15 of 2005, s. 19, for section 21 (w.e.f. 1-1-2005).

Section 22. Acceptance of complete specification

[Acceptance of complete specification.] Omitted by the Patents (Amendment) Act, 2005 (15 of 2005), s. 20 (w.e.f. 1-1-2005).

Section 23. Advertisement of acceptance of complete specification

[Advertisement of acceptance of complete specification.] Omitted by s. 20, ibid. (w.e.f. 1-1-2005).

Section 24. Effect of acceptance of complete specification

[Effect of acceptance of complete specification.] Omitted by s. 20, ibid. (w.e.f. 1-1-2005).

[1]* * * * *

[1] Chapter IVA omitted by Act 15 of 2005, s. 21 (w.e.f. 1-1-2005).

CHAPTER V OPPOSITION PROCEEDINGS TO GRANT OF PATENTS

Section 25. Opposition to the patent

[1][(1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground-

(a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.-For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is

not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground and the Controller shall, if requested by such person for being heard, hear him and dispose of such representation in such manner and within such period as may be prescribed.

(2) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:-

(a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.-For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the patentee has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a patent granted on convention application, the application for patent was not made within twelve months from the date of the first application for protection for the invention made in a convention country or in India by the patentee or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source and geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to

the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground.

(3) (a) Where any such notice of opposition is duly given under sub-section (2), the Controller shall notify the patentee.

(b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller.

(c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as may be prescribed.

(4) On receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the Controller shall order either to maintain or to amend or to revoke the patent.

(5) While passing an order under sub-section (4) in respect of the ground mentioned in clause (d) or clause (e) of sub-section (2), the Controller shall not take into account any personal document or secret trial or secret use.

(6) In case the Controller issues an order under sub-section (4) that the patent shall be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly.

[1] Subs. by s. 23, ibid., for sections 25 and 26 (w.e.f. 1-1-2005).

Section 26. In cases of "obtaining" Controller may treat the patent as the patent of opponent

(1) Where in any opposition proceeding under this Act the Controller finds that-

(a) the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (2) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent;

(b) a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which included the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.]

Section 27. Refusal of patent without opposition

[Refusal of patent without opposition.] Omitted by the Patents (Amendment) Act, 2005 (15 of 2005), s. 24 (w.e.f. 1-1-2005).

Section 28. Mention of inventor as such in patent

(1) If the Controller is satisfied, upon a request or claim made in accordance with the provisions of this section,-

(a) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and

(b) that the application for the patent is a direct consequence of his being the inventor, the Controller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application in the complete specification and in the register of patents:

Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.

(2) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(3) If any person [other than a person in respect of whom a request in relation to the application in question has been made under sub-section (2)] desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

[1][(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.]

[2]* * * * *

(6) [3][Where] a claim is made under sub-section (3), the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested; and before deciding upon any request or claim made under sub-section (2) or sub-section (3), the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under sub-section (3), any person to whom notice of the claim has been given as aforesaid.

(7) Where any person has been mentioned as inventor in pursuance of this section any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

[1] Subs. by Act 15 of 2005, s. 25, for sub-section (4) (w.e.f. 1-1-2005).

[2] Sub-section (5) omitted by s. 25, ibid. (w.e.f. 1-1-2005).

[3] Subs. by s. 25, ibid., for "Subject to the provisions of sub-section (5), where" (w.e.f. 1-1-2005).

CHAPTER VI ANTICIPATION

Section 29. Anticipation by previous publication

(1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or the applicant for the patent proves-

(a) that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and

(b) where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in a convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter: Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application or by any other person in consequence of any disclosure of any invention by that applicant.

Section 30. Anticipation by previous communication to Government

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorised by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

Section 31. Anticipation by public display, etc

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of-

(a) the display of the invention with the consent of the true and first inventor or a person deriving title from him at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or

(b) the publication of any description of the invention in consequence of the display or use of the invention at any

such exhibition as aforesaid; or

(c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or

(d) the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,

if the application for the patent is made by the true and first inventor or a person deriving title from him [1][not later than twelve months] after the opening of the exhibition or the reading or publication of the paper, as the case may be.

[1] Subs. by Act 15 of 2005, s. 26, for "not later than six months" (w.e.f. 1-1-2005).

Section 32. Anticipation by public working

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India-

(a) by the patentee or applicant for the patent or any person from whom he derives title; or

(b) by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title,

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

Section 33. Anticipation by use and publication after provisional specification

(1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is founded was used in India or published in India or elsewhere at any time after the date of that application for protection.

Section 34. No anticipation if circumstances are only as described in sections 29, 30, 31 and 32

Notwithstanding anything contained in this Act, the Controller shall not refuse [1]*** to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

[1] The words "to accept complete specification for a patent or" omitted by Act 15 of 2005, s. 27 (w.e.f. 1-1-2005).

CHAPTER VII PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

Section 35. Secrecy directions relating to inventions relevant for defence purposes

(1) Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defence purposes, or, where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information [1]***.

(2) Where the Controller gives any such directions as are referred to in sub-section (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) Without prejudice to the provisions contained in sub-section (1), where the Central Government is of opinion that an invention in respect of which the Controller has not given any directions under sub-section (1), is relevant for defence purposes, it may at any time before [2][grant of patent] notify the Controller to that effect, and thereupon the

provisions of that sub-section shall apply as if the invention were one of the class notified by the Central Government, and accordingly the Controller shall give notice to the Central Government of the directions issued by him.

[1] The words "to any person or class of persons specified in the directions" omitted by Act 38 of 2002, s. 19 (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 28, for "acceptance of complete specification" (w.e.f. 1-1-2005).

Section 36. Secrecy directions to be periodically reviewed

[1][(1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be re-considered by the Central Government at intervals of [2][six months] or on a request made by the applicant which is found to be reasonable by the Controller and if, on such re-consideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India or in case of an application filed by a foreign applicant it is found that the invention is published outside India it shall forthwith give notice to the Controller to revoke the direction and the Controller shall thereupon revoke the directions previously given by him.]

(2) The result of every re-consideration under sub-section (1), shall be communicated to the applicant within such time and in such manner as may be prescribed.

[1] Subs. by Act 38 of 2002, s. 20, for sub-section (1) (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 29, for "twelve months" (w.e.f. 1-1-2005).

Section 37. Consequences of secrecy directions

(1) So long as any directions under section 35 are in force in respect of an application-

(a) the Controller shall not pass an order refusing [1][to grant] the same; and

(b) notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof:

[2][Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.]

(2) Where a complete specification filed in pursuance of an application for a patent for an invention in respect of which directions have been given under section 35 [3][is found to be in order for grant of the patent] during the continuance in force of the directions, then-

(a) if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order of the Government, the provisions of sections 100, 101 and 103 shall apply in relation to that use as if the patent had been granted for the invention; and

(b) if it appears to the Central Government that the applicant for the patent has suffered hardship by reason of the continuance in force of the directions, the Central Government may make to him such payment (if any) by way of solatium as appears to the Central Government to be reasonable having regard to the novelty and utility of the invention and the purpose for which it is designed, and to any other relevant circumstances.

(3) Where a patent is granted in pursuance of an application in respect of which directions have been given under section 35, no renewal fee shall be payable in respect of any period during which those directions were in force.

[1] Subs. by s. 30, ibid., for "to accept" (w.e.f. 1-1-2005).
[2] Subs. by Act 15 of 2005, s. 30, for the proviso (w.e.f. 1-1-2005).
[3] Subs. by s. 30, ibid., for "is accepted" (w.e.f. 1-1-2005).

Section 38. Revocation of secrecy directions and extension of time

When any direction given under section 35 is revoked by the Controller, then, notwithstanding any provision of this Act specifying the time within which any step should be taken or any act done in connection with an application for the patent, the Controller may, subject to such conditions, if any, as he thinks fit to impose, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time has previously expired.

Section 39. Residents not to apply for patents outside India without prior permission

[1][(1) No person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless-

(a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall dispose of every such application within such period as may be prescribed:

Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.]

[1] Subs by s. 31, ibid., for section 39 (w.e.f. 1-1-2005).

Section 40. Liability for contravention of section 35 or section 39

Without prejudice to the provisions contained in Chapter XX, if in respect of an application for a patent any person contravenes any direction as to secrecy given by the Controller under section 35 [1][or makes or causes to be made an application for grant of a patent outside India in contravention of section 39], or the application for patent under this Act shall be deemed to have been abandoned and the patent granted, if any, shall be liable to be revoked under section 64.

[1] Ins. by Act 38 of 2002, s. 22 (w.e.f. 20-5-2003).

Section 41. Finality of orders of Controller and Central Government

All orders of the Controller giving directions as to secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court on any ground whatsoever.

Section 42. Savings respecting disclosure to Government

Nothing in this Act shall be held to prevent the disclosure by the Controller of information concerning an application for a patent or a specification filed in pursuance thereof to the Central Government for the purpose of the application or specification being examined for considering whether an order under this Chapter should be made or whether an order so made should be revoked.

CHAPTER VIII GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY

Section 43. Grant of patents

[1][(1) Where an application for a patent has been found to be in order for grant of the patent and either-

(a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or

(b) the application has not been found to be in contravention of any of the provisions of this Act,

the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

(2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.]

[1] Subs. by s. 33, ibid., for section 43 (w.e.f. 1-1-2005).

Section 44. Amendment of patent granted to deceased applicant

Where, at any time after a patent has been [1][granted] in pursuance of an application under this Act, the Controller is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was [1][granted], the Controller may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

[1] Subs. by s. 34, ibid., for "sealed" (w.e.f. 1-1-2005).

Section 45. Date of patent

[1][(1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the application for patent was filed.]

(2) The date of every patent shall be entered in the register.

(3) Notwithstanding anything contained in this section, no suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before [2][the date of publication of the application].

[1] Subs. by Act 38 of 2002, s. 24, for sub-section (1) (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 35, for certain words (w.e.f. 1-1-2005).

Section 46. Form, extent and effect of patent

(1) Every patent shall be in the prescribed form and shall have effect throughout India.

(2) A patent shall be granted for one invention only:

Provided that it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Section 47. Grant of patents to be subject to certain conditions

The grant of a patent under this Act shall be subject to the condition that-

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

Section 48. Rights of patentees

[1][Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee-

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

[2]* * * * *]

[1] Subs. by Act 38 of 2002, s. 25, for section 48 (w.e.f. 20-5-2003).

[2] The proviso omitted by Act 15 of 2005, s. 36 (w.e.f. 1-1-2005).

Section 49. Patent rights not infringed when used on foreign vessels, etc., temporarily or accidentally in India

(1) Where a vessel or aircraft registered in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India (including the territorial waters thereof) temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention-

(a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or

(b) in the construction or working of the aircraft or land vehicle or of the accessories thereof, as the case may be.

(2) This section shall not extend to vessels, aircraft or land vehicles owned by persons ordinarily resident in a foreign country the laws of which do not confer corresponding rights with respect to the use of inventions in vessels, aircraft or land vehicles owned by persons ordinarily resident in India while in the ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of its courts.

Section 50. Rights of co-owners of patents

(1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to the provisions contained in this section and in section 51, where two or more persons are registered as

grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to [1][the rights conferred by section 48] for his own benefit without accounting to the other person or persons.

(3) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as grantee or proprietor of a patent, then, a licence under the patent shall not be granted and a share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.

(4) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent, the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.

(5) Subject to the provisions contained in this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents; and nothing contained in sub-section (1) or sub-section (2) shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

(6) Nothing in this section shall affect the rights of the assignees of a partial interest in a patent created before the commencement of this Act.

[1] Subs. by Act 38 of 2002, s. 26, for "make, use, exercise and sell the patented invention" (w.e.f. 20-5-2003).

Section 51. Power of Controller to give directions to co-owners

(1) Where two or more persons are registered as grantee or proprietor of a patent, the Controller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent, or the exercise of any right under section 50 in relation thereto, as he thinks fit.

(2) If any person registered as grantee or proprietor of a patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Controller may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving any directions in pursuance of an application under this section, the Controller shall give an opportunity to be heard-

(a) in the case of an application under sub-section (1), to the other person or persons registered as grantee or proprietor of the patent;

(b) in the case of an application under sub-section (2), to the person in default.

(4) No direction shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or of their rights or obligations as such, or which is inconsistent with the terms of any agreement between persons registered as grantee or proprietor of the patent.

Section 52. Grant of patent to true and first inventor where it has been obtained by another in fraud of him

(1) [1][Where the patent has been revoked under section 64] on the ground that the patent was obtained wrongfully and in contravention of the rights of the petitioner or any person under or through whom he claims, or, where in a petition for revocation, the [2][[3]*** court], instead of revoking the patent, directs the complete specification to be amended by the exclusion of a claim or claims in consequence of a finding that the invention covered by such claim or claims had been obtained from the petitioner, the [2][[3]*** court] may, by order passed in the same proceeding, permit the grant to the petitioner of the whole or such part of the invention which the [2][[3]*** court] finds has been wrongfully obtained by the patentee, in lieu of the patent so revoked or is excluded by amendment.

(2) Where any such order is passed, the Controller shall, on request by the petitioner made in the prescribed manner grant to him-

(i) in cases where the [2][[3]*** court] permits the whole of the patent to be granted, a new patent bearing the same date and number as the patent revoked;

(ii) in cases where the [2][[3]*** court] permits a part only of the patent to be granted, a new patent for such part bearing the same date as the patent revoked and numbered in such manner as may be prescribed:

Provided that the Controller may, as a condition of such grant, require the petitioner to file a new and complete

specification to the satisfaction of the Controller describing and claiming that part of the invention for which the patent is to be granted.

(3) No suit shall be brought for any infringement of a patent granted under this section committed before the actual date on which such patent was granted.

[1] Subs. by Act 15 of 2005, s. 37, for "Where a patent has been revoked" (w.e.f. 1-1-2005).
[2] Subs. by s. 37, ibid., for "court" (w.e.f. 2-4-2007).
[3] The word "Appellate Board" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).

Section 53. Term of patent

[1][(1) Subject to the provisions of this Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2002, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.]

[2][Explanation.-For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.]

(2) A patent shall cease to have effect notwithstanding anything therein or in this Act on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period [3][or within such extended period as may be prescribed].

[4]* * * * *

[5][(4) Notwithstanding anything contained in any other law for the time being in force, on cessation of the patent right due to non-payment of renewal fee or on the expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.]

[1] Subs. by Act 38 of 2002, s. 27, for sub-section (1) (w.e.f. 20-5-2003).
[2] The Explanation ins. by Act 15 of 2005, s. 38 (w.e.f. 1-1-2005).
[3] Subs. by s. 38, ibid., for "or within that period as extended under this section" (w.e.f. 1-1-2005).
[4] Sub-section (3) omitted by s. 38, ibid. (w.e.f. 1-1-2005).
[5] Ins. by Act 38 of 2002, s. 27 (w.e.f. 20-5-2003).

CHAPTER IX PATENTS OF ADDITION

Section 54. Patents of addition

(1) Subject to the provisions contained in this section, where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefor (in this Act referred to as the "main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

(2) Subject to the provisions contained in this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, by order, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of filing of the [1][application] was the same as or later than the date of filing of the [1][application] in respect of the main invention.

[2][(4) A patent of addition shall not be granted before grant of the patent for the main invention.]

[1] Subs. by Act 15 of 2005, s. 39, for "complete specification" (w.e.f. 1-1-2005).
[2] Subs. by s. 39, ibid., for sub-section (4) (w.e.f. 1-1-2005).

Section 55. Term of patents of addition

(1) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as has not expired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that if the patent for the main invention is revoked under this Act, the court, or, as the case may be, the Controller, on request made to him by the patentee in the prescribed manner, may order that the patent of addition shall become an independent patent for the remainder of the term for the patent for the main invention and thereupon the patent shall continue in force as an independent patent accordingly.

(2) No renewal fees shall be payable in respect of a patent of addition, but, if any such patent becomes an independent patent under sub-section (1), the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

Section 56. Validity of patents of addition

(1) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of-

(a) the main invention described in the complete specification relating thereto; or

(b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition,

and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(2) For the removal of doubts it is hereby declared that in determining the novelty of the invention claimed in the complete specification filed in pursuance of an application for a patent of addition regard shall be had also to the complete specification in which the main invention is described.

CHAPTER X AMENDMENT OF APPLICATIONS AND SPECIFICATIONS

Section 57. Amendment of application and specification before Controller

(1) Subject to the provisions of section 59, the Controller may, upon application made under this section in the prescribed manner by an applicant for a patent or by a patentee, allow the application for the patent or the complete specification [1][or any document relating thereto] to be amended subject to such conditions, if any, as the Controller thinks fit:

Provided that the Controller shall not pass any order allowing or refusing an application to amend an application for a patent or a specification [1][or any document relating thereto] under this section while any suit before a court for the infringement of the patent or any proceeding before the High Court for the revocation of the patent is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.

(2) Every application for leave to amend an application for a patent [2][or a complete specification or any document relating thereto] under this section shall state the nature of the proposed amendment, and shall give full particulars of the reasons for which the application is made.

[3][(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published.]

(4) Where an application is [4][published] under sub-section (3), any person interested may, within the prescribed period after the [5][publication] thereof, give notice to the Controller of opposition thereto; and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to that person and to the opponent an opportunity to be heard before he decides the case.

(5) An amendment under this section of a complete specification may be, or include, an amendment of the priority date of a claim.

[6][(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent.]

[1] Ins. by Act 38 of 2002, s. 28 (w.e.f. 20-5-2003).
[2] Subs. by s. 28, ibid., for "or a specification" (w.e.f. 20-5-2003).
[3] Subs. by Act 15 of 2005, s. 40, for sub-section (3) (w.e.f. 1-1-2005).
[4] Subs. by s. 40, ibid., for "advertised" (w.e.f. 1-1-2005).
[5] Subs. by s. 40, ibid., for "advertisement" (w.e.f. 1-1-2005).
[6] Subs. by s. 40, ibid., for sub-section (6) (w.e.f. 1-1-2005).

Section 58. Amendment of specification before Appellate Board or High Court

[1][(1) In any proceeding before [2]*** the High Court for the revocation of a patent, [2]*** the High Court, [3]***, may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as [2]*** the High Court may think fit, and if in any proceedings for revocation [2]*** the High Court decides that the patent is invalid, it may allow the

specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to [2]*** the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by [2]*** the High Court.

(3) Copies of all orders of the [2]*** the High Court allowing the patentee to amend the specification shall be transmitted by [2]*** the High Court to the Controller who shall, on receipt thereof, cause an entry thereof and reference thereto to be made in the register.]

[1] Subs. by s. 41, ibid., for section 58 (w.e.f. 2-4-2007).
[2] The word "the Appellate Board" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).
[3] The words "as the case may be" omitted by s. 13, ibid. (w.e.f. 4-4-2021).

Section 59. Supplementary provisions as to amendment of application or specification

[1][(1) No amendment of an application for a patent or a complete specification or any document relating thereto shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact, and no amendment of a complete specification shall be allowed, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed or shown in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.]

[2][(2) Where after the date of grant of patent any amendment of the specification or any other documents related thereto is allowed by the Controller or by [3]*** the High Court, as the case may be,-

(a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;

(b) the fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and

(c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.]

(3) In construing the specification as amended, reference may be made to the specification as originally accepted.

[1] Subs. by Act 38 of 2002, s. 29, for sub-section (1) (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 42, for sub-section (2) (w.e.f. 2-4-2007).
[3] The words "the Appellate Board or" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).

CHAPTER XI RESTORATION OF LAPSED PATENTS

Section 60. Applications for restoration of lapsed patents

(1) Where a patent has ceased to have effect by reason of failure to pay any renewal fee within the [1][period prescribed under section 53 or within such period as may be allowed under sub-section (4) of section 142], the patentee or his legal representative, and where the patent was held by two or more persons jointly, then, with the leave of the Controller, one or more of them without joining the others, may, within [2][eighteen months] from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

[3]* * * * *

(3) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

[1] Subs. by Act 15 of 2005, s. 43, for "prescribed period or within that period as extended under sub-section (3) of section 53" (w.e.f. 1-1-2005).
[2] Subs. by Act 38 of 2002, s. 30, for "one year" (w.e.f. 20-5-2003).
[3] Sub-section (2) omitted by s. 30, ibid. (w.e.f. 20-5-2003).

Section 61. Procedure for disposal of applications for restoration of lapsed patents

(1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is prima facie satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall [1][publish the application] in the prescribed manner; and within the prescribed period any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds, that is to say,-

(a) that the failure to pay the renewal fee was not unintentional; or

(b) that there has been undue delay in the making of the application.

(2) If notice of opposition is given within the period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(3) If no notice of opposition is given within the period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

(4) The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be made in the register of any document or matter which, under the provisions of this Act, has to be entered in the register but which has not been so entered.

[1] Subs. by Act 15 of 2005, s. 44, for "advertise the application" (w.e.f. 1-1-2005).

Section 62. Rights of patentees of lapsed patents which have been restored

(1) Where a patent is restored, the rights of the patentee shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of the [1][publication] of the application for restoration of the patent under this Chapter.

(2) No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the [2][date of publication] of the application for restoration of the patent.

[1] Subs. by s. 45, ibid., for "advertisement" (w.e.f. 1-1-2005).
[2] Subs. by Act 15 of 2005, s. 45, for "date of the advertisement" (w.e.f. 1-1-2005).

CHAPTER XII SURRENDER AND REVOCATION OF PATENTS

Section 63. Surrender of patents

(1) A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

(2) Where such an offer is made, the Controller shall [1][publish] the offer in the prescribed manner, and also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

(3) Any person interested may, within the prescribed period after [2][such publication] give notice to the Controller of opposition to the surrender, and where any such notice is given the Controller shall notify the patentee.

(4) If the Controller is satisfied after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and, by order revoke the patent.

[1] Subs. by s. 46, ibid., for "advertise" (w.e.f. 1-1-2005).
[2] Subs. by s. 46, ibid., for "such advertisement" (w.e.f. 1-1-2005).

Section 64. Revocation of Power patents

(1) Subject to the provisions contained in this Act, a patent whether granted before or after the commencement of this Act, may, [1][be revoked on a petition of any person interested or of the Central Government [2]*** or on a counter-claim in a suit for infringement of the patent by the High Court] on any of the following grounds, that is to say-

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;

(b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor:

[3]* * * * *

(c) that the patent was obtained wrongfully in contravention of the rights of the petitioner or any person under or through whom he claims;

(d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

(e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in section 13:

[3]* * * * *

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any

inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim:

[3]* * * * *

(g) that the invention, so far as claimed in any claim of the complete specification, is not useful;

(h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention, or that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim, protection;

(i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;

(j) that the patent was obtained on a false suggestion or representation;

(k) that the subject of any claim of the complete specification is not patentable under this Act;

(l) that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (3), before the priority date of the claim;

(m) that the applicant for the patent has failed to disclose to the Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;

(n) that the applicant contravened any direction for secrecy passed under section 35 [4][or made or caused to be made an application for the grant of a patent outside India in contravention of section 39];

(o) that leave to amend the complete specification under section 57 or section 58 was obtained by fraud;

[4][(p) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(q) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.]

(2) For the purposes of clauses (e) and (f) of sub-section (1),-

(a) no account shall be taken of [5][personal document or secret trial or secret use]; and

(b) where the patent is for a process or for a product as made by a process described or claimed the importation into India of the product made abroad by that process shall constitute knowledge or use in India of the invention on the date of the importation, except where such importation has been for the purpose of reasonable trial or experiment only.

(3) For the purpose of clause (l) of sub-section (1), no account shall be taken of any use of the invention-

(a) for the purpose of reasonable trial or experiment only; or

(b) by the Government or by any person authorised by the Government or by a Government undertaking, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention directly or indirectly to the Government or person authorised as aforesaid or to the Government undertaking; or

(c) by any other person, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention, and without the consent or acquiescence of the applicant or of any person from whom he derives title. (4) Without prejudice to the provisions contained in sub-section (1), a patent may be revoked by the High Court on the petition of the Central Government, if the High Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Central Government to make, use or exercise the patented invention for the purposes of Government within the meaning of section 99 upon reasonable terms.

(5) A notice of any petition for revocation of a patent under this section shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein and it shall not be necessary to serve a notice on any other person.

[1] Subs. by s. 47, ibid., for certain words (w.e.f. 2-4-2007).

[2] The words "by the Appellate Board" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).

[3] The proviso omitted by Act 38 of 2002, s. 31 (w.e.f. 20-5-2003).

[4] Ins. by Act 38 of 2002, s. 31 (w.e.f. 20-5-2003).

[5] Subs. by s. 31, ibid., for "secret use" (w.e.f. 20-5-2003).

Section 65. Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy

[1][(1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962), it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent.]

[1] Subs. by Act 15 of 2005, s. 48, for section 65 (w.e.f. 1-1-2005).

Section 66. Revocation of patent in public interest

Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

CHAPTER XIII REGISTER OF PATENTS

Section 67. Register of patents and particulars to be entered therein

(1) There shall be kept at the patent office a register of patents, wherein shall be entered-

(a) the names and addresses of grantees of patents;

(b) notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, an revocations of patents; and

(c) particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) No notice of any trust, whether express, implied or constructive, shall be entered in the register, and the Controller shall not be affected by any such notice.

(3) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller.

[1][(4) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patents or any part thereof in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), a copy of, or extracts from, the register of patents, certified to be a true copy under the hand of the Controller or any officer duly authorised by the Controller in this behalf shall, in all legal proceedings, be admissible in evidence.

(6) In the event the register is kept wholly or partly in computer floppies, diskettes or any other electronic form,-

(a) reference in this Act to an entry in the register shall be deemed to include reference to a record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register;

(b) references in this Act to particulars being registered or entered in the register shall be deemed to include references to the keeping of record of those particulars comprising the register or part of the register in computer floppies, diskettes or any other electronic form; and

(c) references in this Act to the rectification of the register are to be read as including references to the rectification of the record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register.]

[1] Subs. by Act 38 of 2002, s. 32, for sub-section (4) (w.e.f. 20-5-2003).

Section 68. Assignments, etc., not to be valid unless in writing and duly executed

[1][An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed.]

[1] Subs. by Act 15 of 2005, s. 49, for section 68 (w.e.f. 1-1-2005).

Section 69. Registration of assignments, transmissions, etc

(1) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

(2) Without prejudice to the provisions of sub-section (1), an application for the registration of the title of any person becoming entitled by assignment to a patent or a share in a patent or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a patent may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where an application is made under this section for the registration of the title of any person the Controller shall, upon proof of title to his satisfaction,-

(a) where that person is entitled to a patent or a share in a patent, register him in the register as proprietor or co-proprietor of the patent, and enter in the register particulars of the instrument or event by which he derives title; or

(b) where that person is entitled to any other interest in the patent, enter in the register notice of his interest, with particulars of the instrument, if any, creating it:

Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validly vested in such person a title to the patent or any share or interest therein, the Controller may refuse to take any action under clause (a) or, as the case may be, under clause (b), until the rights of the parties have been determined by a competent court.

(4) There shall be supplied to the Controller in the prescribed manner for being filed in the patent office copies of all agreements, licences and other documents affecting the title to any patent or any licence thereunder authenticated in the prescribed manner and also such other documents as may be prescribed relevant to the subject-matter:

Provided that in the case of a licence granted under a patent, the Controller shall, if so requested by the patentee or licensee, take steps for securing that the terms of the licence are not disclosed to any person except under the order of a court.

(5) Except for the purposes of an application under sub-section (1) or of an application to rectify the register, a document in respect of which no entry has been made in the register under sub-section (3) shall not be admitted by the Controller or by any court as evidence of the title of any person to a patent or to a share or interest therein unless the Controller or the court, for reasons to be recorded in writing, otherwise directs.

Section 70. Power of registered grantee or proprietor to deal with patent

Subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.

Section 71. Rectification of register by [1][High Court]

(1) The [1][High Court] may, on the application of any person aggrieved-

(a) by the absence or omission from the register of any entry; or

(b) by any entry made in the register without sufficient cause; or

(c) by any entry wrongly remaining on the register; or

(d) by any error or defect in any entry in the register,

make such order for the making, variation or deletion, of any entry therein as it may think fit.

(2) In any proceeding under this section the [1][High Court] may decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of any application to the [1][High Court] under this section shall be given in the prescribed manner to the Controller who shall be entitled to appear and be heard on the application, and shall appear if so directed by the [2][High Court].

(4) Any order of the [1][High Court] under this section rectifying the register shall direct that notice of the rectification

shall be served upon the Controller in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

[1] Subs. by Act 33 of 2021, s. 13, for "Appellate Board" (w.e.f. 20-5-2003).

[2] Subs. by s. 13, ibid., for "Board" (w.e.f. 4-4-2021).

Section 72. Register to be open for inspection

(1) Subject to the provisions contained in this Act and any rules made thereunder, the register shall at all convenient times be open to inspection by the public; and certified copies, sealed with the seal of the patent office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(2) The register shall be prima facie evidence of any matters required or authorised by or under this Act to be entered therein.

[1][(3) If the record of particulars is kept in computer floppies or diskettes or in any other electronic form, sub-sections (1) and (2) shall be deemed to have been complied with if the public is given access to such computer floppies, diskettes or any other electronic form or printouts of such record of particulars for inspection.]

[1] Ins. by Act 38 of 2002, s. 34 (w.e.f. 20-5-2003).

CHAPTER XIV PATENT OFFICE AND ITS ESTABLISHMENT

Section 73. Controller and other officers

(1) The Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of [1][section 3 of the Trade Marks Act, 1999 (47 of 1999)], shall be the Controller of Patents for the purposes of this Act.

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers and with such designations as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under sub-section (2) shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may, by order in writing and for reasons to be recorded therein withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

[1] Subs. by s. 35, ibid., for certain words (w.e.f. 20-5-2003).

Section 74. Patent office and its branches

(1) For the purposes of this Act, there shall be an office which shall be known as the patent office.

[1][(2) The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office.]

(3) The head office of the patent office shall be at such place as the Central Government may specify, and for the purpose of facilitating, the registration of patents there may be established, at such other places as the Central Government may think fit, branch offices of the patent office.

(4) There shall be a seal of the patent office.

[1] Subs. by Act 15 of 2005, s. 50, for sub-section (2) (w.e.f. 1-1-2005).

Section 75. Restriction on employees of patent office as to right or interest in patents

All officers and employees of the patents office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by that office.

Section 76. Officers and employees not to furnish information, etc

An officer or employee in the patent office shall not, except when required or authorised by this Act or under a direction in writing of the [1][Central Government [2]***] or the Controller or by order of a court,-

(a) furnish information on a matter which is being, or has been, or dealt with under this Act [3]***; or

(b) prepare or assist in the preparation of a document required or permitted by or under this Act [3]*** to be lodged in the patent office; or

(c) conduct a search in the records of the patent office.

[1] Subs. by Act 38 of 2002, s. 36, for "Central Government" (w.e.f. 20-5-2003).

[2] The words "or Appellate Board" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).
[3] The words and figures "or under the Indian Patents or Designs Act, 1911 (2 of 1911)" omitted by Act 38 of 2002, s. 36 (w.e.f. 20-5-2003).

CHAPTER XV POWERS OF CONTROLLER GENERALLY

Section 77. Controller to have certain powers of a civil court

(1) Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) awarding costs;

(f) reviewing his own decision on application made within the prescribed time and in the prescribed manner;

(g) setting aside an order passed ex parte on application made within the prescribed time and in the prescribed manner;

(h) any other matter which may be prescribed.

(2) Any order for costs awarded by the Controller in exercise of the powers conferred upon him under sub-section (1) shall be executable as a decree of a civil court.

Section 78. Power of Controller to correct clerical errors, etc

(1) Without prejudice to the provisions contained in sections 57 and 59 as regards amendment of applications for patents or complete specifications [1][or other documents relating thereto] and subject to the provisions of section 44, the Controller may, in accordance with the provisions of this section, correct any clerical error in any patent or in any specification or other document filed in pursuance of such application or in any application for a patent or any clerical error in any matter which is entered in the register.

(2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.

(3) Where the Controller proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.

(4) Where a request is made under this section for the correction of any error in a patent or application for a patent or any document filed in pursuance of such an application, and it appears to the Controller that the correction would materially alter the meaning or scope of the document to which the request relates and ought not to be made without notice to persons affected thereby, he shall require notice of the nature of the proposed correction to be [2][published] in the prescribed manner.

(5) Within the prescribed time after any [3][such publication] as aforesaid any person interested may give notice to the Controller of opposition to the request, and, where such notice of opposition is given, the Controller shall give notice thereof to the person by whom the request was made, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

[1] Ins. by Act 38 of 2002, s. 37 (w.e.f. 20-5-2003).
[2] Subs. by Act 15 of 2005, s. 51, for "advertised" (w.e.f. 1-1-2005).
[3] Subs. by s. 51, ibid., for "such advertisement" (w.e.f. 1-1-2005).

Section 79. Evidence how to be given and powers of Controller in respect thereof

Subject to any rules made in this behalf, in any proceeding under this Act before the Controller, evidence shall be given by affidavit in the absence of directions by the Controller to the contrary, but in any case in which the Controller thinks it right so to do, he may take oral evidence in lieu of, or in addition to, evidence by affidavit, or may allow any party to be cross-examined on the contents of his affidavit.

Section 80. Exercise of discretionary powers by Controller

Without prejudice to any provision contained in this Act requiring the Controller to hear any party to the proceedings thereunder or to give any such party an opportunity to be heard, the Controller shall give to any applicant for a patent,

or for amendment of a specification (if within the prescribed time the applicant so requires) an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Controller by or under this Act:

[1][Provided that the party desiring a hearing makes the request for such hearing to the Controller at least ten days in advance of the expiry of the time-limit specified in respect of the proceeding.]

[1] Ins. by Act 38 of 2002, s. 38 (w.e.f. 20-5-2003).

Section 81. Disposal by Controller of applications for extension of time

Where under the provisions of this Act or the rules made thereunder the Controller may extend the time for doing any act, nothing in this Act shall be deemed to require him to give notice to or hear the party interested in opposing the extension, nor shall any appeal lie from any order of the Controller granting such extension.

CHAPTER XVI WORKING OF PATENTS, COMPULSORY LICENCES AND REVOCATION

Section 82. Definition of "patented articles" and "patentee"

In this Chapter, unless the context otherwise requires,-

(a) "patented article" includes any article made by a patented process; and

(b) "patentee" includes an exclusive licensee.

Section 83. General principles applicable to working of patented inventions

Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely:-

(a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;

(b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;

(c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;

(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;

(e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;

(f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

Section 84. Compulsory licences

(1) At any time after the expiration of three years from the date of the [1][grant] of patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:-

(a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or

(b) that the patented invention is not available to the public at a reasonably affordable price, or

(c) that the patented invention is not worked in the territory of India.

(2) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.

(3) Every application under sub-section (1) shall contain a statement setting out the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(4) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention

have not been satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may grant a licence upon such terms as he may deem fit.

(5) Where the Controller directs the patentee to grant a licence he may, as incidental thereto, exercise the powers set out in section 88.

(6) In considering the application filed under this section, the Controller shall take into account,-

(i) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(ii) the ability of the applicant to work the invention to the public advantage;

(iii) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;

(iv) as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit:

Provided that this clause shall not be applicable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or on establishment of a ground of anti-competitive practices adopted by the patentee,

but shall not be required to take into account matters subsequent to the making of the application.

[2][Explanation.-For the purposes of clause (iv), "reasonable period" shall be construed as a period not ordinarily exceeding a period of six months.]

(7) For the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied-

(a) if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms,-

(i) an existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or

(ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or

(iii) a market for export of the patented article manufactured in India is not being supplied or developed; or

(iv) the establishment or development of commercial activities in India is prejudiced; or

(b) if, by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or

(c) if the patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing, or

(d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable, or

(e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by-

(i) the patentee or persons claiming under him; or

(ii) persons directly or indirectly purchasing from him; or

(iii) other persons against whom the patentee is not taking or has not taken proceedings for infringement.

[1] Subs. by Act 15 of 2005, s. 52, for "sealing" (w.e.f. 1-1-2005).

[2] The Explanation ins. by Act 15 of 2005, s. 52 (w.e.f. 1-1-2005).

Section 85. Revocation of patents by the Controller for non-working

(1) Where, in respect of a patent, a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, the facts upon which the application is based, and, in the case of an application other than by the Central Government, shall also set out the nature of the applicant's interest.

(3) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that patented invention have not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may make an order revoking the patent.

(4) Every application under sub-section (1) shall ordinarily be decided within one year of its being presented to the Controller.

Section 86. Power of Controller to adjourn applications for compulsory licences, etc., in certain cases

(1) Where an application under section 84 or section 85, as the case may be, is made on the grounds that the patented invention has not been worked in the territory of India or on the ground mentioned in clause (d) of sub-section (7) of section 84 and the Controller is satisfied that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable the invention to be worked on a commercial scale to an adequate extent or to enable the invention to be so worked to the fullest extent that is reasonably practicable, he may, by order, adjourn the further hearing of the application for such period not exceeding twelve months in the aggregate as appears to him to be sufficient for the invention to be so worked:

Provided that in any case where the patentee establishes that the reason why a patented invention could not be worked as aforesaid before the date of the application was due to any State or Central Act or any rule or regulation made thereunder or any order of the Government imposed otherwise than by way of a condition for the working of the invention in the territory of India or for the disposal of the patented articles or of the articles made by the process or by the use of the patented plant, machinery, or apparatus, then, the period of adjournment ordered under this sub-section shall be reckoned from the date on which the period during which the working of the invention was prevented by such Act, rule or regulation or order of Government as computed from the date of the application, expires.

(2) No adjournment under sub-section (1) shall be ordered unless the Controller is satisfied that the patentee has taken with promptitude adequate or reasonable steps to start the working of the invention in the territory of India on a commercial scale and to an adequate extent.

Section 87. Procedure for dealing with applications under sections 84 and 85

(1) Where the Controller is satisfied, upon consideration of an application under section 84 or section 85, that a prima facie case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made, and [1][shall publish the application in the official journal].

(2) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application (made either before or after the expiration of the prescribed time) allow, give to the Controller notice of opposition.

(3) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(4) Where any such notice of opposition is duly given, the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

[1] Subs. by Act 15 of 2005, s. 53, for "shall advertise the application in the Official Gazette" (w.e.f. 1-1-2005).

Section 88. Powers of Controller in granting compulsory licences

(1) Where the Controller is satisfied on an application made under section 84 that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of that section, order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(2) Where an application under section 84 is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(3) Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to some only of the said patents, then, if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him

under those patents without infringing the other patents held by the patentee and if those patents involve important technical advancement or considerable economic significance in relation to the other patents, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licensee to work the patent or patents in regard to which a licence is granted under section 84.

(4) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions settled have proved to be more onerous than originally expected and that in consequence thereof the licensee is unable to work the invention except at a loss:

Provided that no such application shall be entertained a second time.

Section 89. General purposes for granting compulsory licences

The powers of the Controller upon an application made under section 84 shall be exercised with a view to securing the following general purposes, that is to say,-

(a) that patented inventions are worked on a commercial scale in the territory of India without undue delay and to the fullest extent that is reasonably practicable;

(b) that the interests of any person for the time being working or developing an invention in the territory of India under the protection of a patent are not unfairly prejudiced.

Section 90. Terms and conditions of compulsory licences

(1) In settling the terms and conditions of a licence under section 84, the Controller shall endeavour to secure-

(i) that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;

(ii) that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;

(iii) that the patented articles are made available to the public at reasonably affordable prices;

(iv) that the licence granted is a non-exclusive licence;

(v) that the right of the licensee is non-assignable;

(vi) that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;

[1][(vii) that the licence is granted with a predominant purpose of supply in the Indian market and that the licensee may also export the patented product, if need be in accordance with the provisions of sub-clause (iii) of clause (a) of sub-section (7) of section 84;

(viii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use;

(ix) that in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product, if need be.]

(2) No licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, if in its opinion it is necessary so to do, in the public interest, direct the Controller at any time to authorise any licensee in respect of a patent to import the patented article or an article or substance made by a patented process from abroad (subject to such conditions as it considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article and the period of importation), and thereupon the Controller shall give effect to the directions.

[1] Subs. by Act 15 of 2005, s. 54, for clause (vii) (w.e.f. 1-1-2005).

Section 91. Licensing of related patents

(1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the sealing of a patent, any person who has the right to work any other patented invention either as patentee or as licensee thereof, exclusive or otherwise, may apply to the Controller for the grant of a licence of the first-mentioned patent on the ground that he is prevented or hindered without such licence from working the other invention efficiently or to the best

advantage possible.

(2) No order under sub-section (1) shall be made unless the Controller is satisfied-

(i) that the applicant is able and willing to grant, or procure the grant to the patentee and his licensees if they so desire, of a licence in respect of the other invention on reasonable terms; and

(ii) that the other invention has made a substantial contribution to the establishment or development of commercial or industrial activities in the territory of India.

(3) When the Controller is satisfied that the conditions mentioned in sub-section (1) have been established by the applicant, he may make an order on such terms as he thinks fit granting a licence under the first-mentioned patent and a similar order under the other patent if so requested by the proprietor of the first-mentioned patent or his licensee:

Provided that the licence granted by the Controller shall be non-assignable except with the assignment of the respective patents.

(4) The provisions of sections 87, 88, 89 and 90 shall apply to licences granted under this section as they apply to licences granted under section 84.

Section 92. Special provision for compulsory licences on notifications by Central Government

(1) If the Central Government is satisfied, in respect of any patent in force in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licences should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette, and thereupon the following provisions shall have effect, that is to say,-

(i) the Controller shall, on application made at any time after the notification by any person interested, grant to the applicant a licence under the patent on such terms and conditions as he thinks fit;

(ii) in settling the terms and conditions of a licence granted under this section, the Controller shall endeavour to secure that the articles manufactured under the patent shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(2) The provisions of sections 83, 87, 88, 89 and 90 shall apply in relation to the grant of licences under this section as they apply in relation to the grant of licences under section 84.

(3) Notwithstanding anything contained in sub-section (2), where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in-

(i) a circumstance of national emergency; or

(ii) a circumstance of extreme urgency; or

(iii) a case of public non-commercial use,

which may arise or is required, as the case may be, including public health crises, relating to Acquired Immuno Deficiency Syndrome, human immunodeficiency virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section:

Provided that the Controller shall, as soon as may be practicable, inform the patentee of the patent relating to the application for such non-application of section 87.

Section 92A. Compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances

[1][(1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.

(2) The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.

(3) The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to which pharmaceutical products produced under a compulsory licence can be exported under any other provision of this Act.

Explanation.-For the purposes of this section, "pharmaceutical products" means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems

and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.]

[1] Ins. by Act 15 of 2005, s. 55 (w.e.f. 1-1-2005).

Section 93. Order for licence to operate as a deed between parties concerned

Any order for the grant of a licence under this Chapter shall operate as if it were a deed granting a licence executed by the patentee and all other necessary parties embodying the terms and conditions, if any, settled by the Controller.

Section 94. Termination of compulsory licence

(1) On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence granted under section 84 may be terminated by the Controller, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur:

Provided that the holder of the compulsory licence shall have the right to object to such termination.

(2) While considering an application under sub-section (1), the Controller shall take into account that the interest of the person who had previously been granted the licence is not unduly prejudiced.]

CHAPTER XVII USE OF INVENTIONS FOR PURPOSES OF GOVERNMENT AND ACQUISITION OF INVENTIONS BY CENTRAL GOVERNMENT

Section 99. Meaning of use of invention for purposes of Government

(1) For the purposes of this Chapter, an invention is said to be used for the purposes of Government if it is made, used, exercised or vended for the purposes of the Central Government, a State Government or a Government undertaking.

[1]* * * * *

(3) Nothing contained in this Chapter shall apply in respect of any such importation making or using of any machine, apparatus or other article or of any such using of any process or of any such importation, using or distribution of any medicine or drug, as may be made by virtue of one or more of the conditions specified in section 47.

[1] Sub-section (2) omitted by Act 38 of 2002, s. 40 (w.e.f. 20-5-2003).

Section 100. Power of Central Government to use inventions for purposes of Government

(1) Notwithstanding anything contained in this Act, at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorised in writing by it, may use the invention for the purposes of Government in accordance with the provisions of this Chapter.

(2) Where an invention has, before the priority date of the relevant claim of the complete specification, been duly recorded in a document, or tested or tried, by or on behalf of the Government or a Government undertaking, otherwise than in consequence of the communication of the invention directly or indirectly by the patentee or by a person from whom he derives title, any use of the invention by the Central Government or any person authorised in writing by it for the purposes of Government may be made free of any royalty or other remuneration to the patentee.

(3) If and so far as the invention has not been so recorded or tried or tested as aforesaid, any use of the invention made by the Central Government or any person authorised by it under sub-section (1), at any time after [1][grant of the patent] or in consequence of any such communication as aforesaid, shall be made upon terms as may be agreed upon either before or after the use, between the Central Government or any person authorised under sub-section (1) and the patentee, or, as may in default of agreement be determined by the High Court on a reference under section 103:

[2][Provided that in case of any such use of any patent, the patentee shall be paid not more than adequate remuneration in the circumstances of each case, taking into account the economic value of the use of the patent.]

(4) The authorisation by the Central Government in respect of an invention may be given under this section, either before or after the patent is granted and either before or after the acts in respect of which such authorisation is given or done, and may be given to any person, whether or not he is authorised directly or indirectly by the applicant or the patentee to make, use, exercise or vend the invention or import the machine, apparatus or other article or medicine or drug covered by such patent.

(5) Where an invention has been used by or with the authority of the Central Government for the purposes of Government under this section, then, [3][except in case of national emergency or other circumstances of extreme urgency or for non-commercial use], the Government shall notify the patentee as soon as practicable of the fact and furnish him with such information as to the extent of the use of the invention as he may, from time to time, reasonable require; and where the invention has been used for the purposes of a Government undertaking, the Central

Government may call for such information as may be necessary for this purpose from such undertaking.

(6) The right to make, use, exercise and vend an invention for the purposes of Government under sub-section (1) shall include the [4][right to sell, on non-commercial basis, the goods] which have been made in exercise of that right, and a purchaser of goods so sold, and a person claiming through him, shall have the power to deal with the goods as if the Central Government or the person authorised under sub-section (1) were the patentee of the invention.

(7) Where in respect of a patent which has been the subject of an authorisation under this section, there is an exclusive licensee as is referred to in sub-section (3) of section 101, or where such patent has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention (including payments by way of minimum royalty), the notice directed to be given under sub-section (5) shall also be given to such exclusive licensee or assignor as the case may be, and the reference to the patentee in sub-section (3) shall be deemed to include a reference to such assignor or exclusive licensee.

[1] Subs. by Act 15 of 2005, s. 56, for "the acceptance of the complete specification in respect of the patent" (w.e.f. 1-1-2005).

[2] Subs. by Act 38 of 2002, s. 41, for the proviso (w.e.f. 20-5-2003).

[3] Subs. by s. 41, ibid., for certain words (w.e.f. 20-5-2003).

[4] Subs. by Act 38 of 2002, s. 41 for "right to sell the goods" (w.e.f. 20-5-2003).

Section 101. Rights of third parties in respect of use of invention for purposes of Government

(1) In relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the purposes of Government-

(a) by the Central Government or any person authorised by the Central Government under section 100; or

(b) by the patentee or applicant for the patent to the order made by the Central Government,

the provisions of any licence, assignment or agreement granted or made, [1]*** between the patentee or applicant for the patent (or any person who derives title from him or from whom he derives title) and any person other than the Central Government shall be of no effect so far as those provisions-

(i) restrict or regulate the use for the purposes of Government of the invention, or of any model, document or information relating thereto, or

(ii) provide for the making of payments in respect of any use of the invention or of the model, document or information relating thereto for the purposes of Government [2]***,

and the reproduction or publication of any model or document in connection with the said use for the purposes of Government shall not be deemed to be an infringement of any copyright subsisting in the model or document.

(2) Where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention [1]***, then, in relation to any use of the invention made for the purposes of Government by the patentee to the order of the Central Government, sub-section (3) of section 100 shall have effect as if that use were made by the virtue of an authority given under that section; and any rise of the invention for the purposes of Government by virtue of sub-section (3) of that section shall have effect as if the reference to the patentee included a reference to the assignor of the patent, and any sum payable by virtue of that sub-section shall be divided between the patentee and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103.

(3) Where by virtue of sub-section (3) of section 100, payments are required to be made by the Central Government or persons authorised under sub-section (2) of that section in respect of the use of an invention for the purposes of Government and where in respect of such patent there is an exclusive licensee authorised under his licence to use the invention for the purposes of Government, such sum shall be shared by the patentee and such licensee in such proportions, if any, as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103 to be just, having regard to any expenditure incurred by the licensee-

(a) in developing the said invention; or

(b) in making payments to the patentees other than royalties or other benefits determined by reference to the use of the invention [3]*** in consideration of the licence.

[1] The words ", whether before or after the commencement of this Act," omitted by Act 38 of 2002, s. 42 (w.e.f. 20-5-2003).

[2] The brackets and words "(including payments by way of minimum royalty)" omitted by s. 42, ibid. (w.e.f. 20-5-2003).

[3] The words "including payments by way of minimum royalty" omitted by Act 38 of 2002, s. 42 (w.e.f. 20-5-2003).

Section 102. Acquisition of inventions and patents by the Central Government

(1) The Central Government may, if satisfied that it is necessary that an invention which is the subject of an application for a patent or a patent should be acquired from the applicant or the patentee for a public purpose, publish a notification to that effect in the Official Gazette, and thereupon the invention or patent and all rights in respect of the invention or patent shall, by force of this section, stand transferred to and be vested in the Central Government.

(2) Notice of the acquisition shall be given to the applicant, and, where a patent has been granted, to the patentee and other persons, if any, appearing in the register as having an interest in the patent.

(3) The Central Government shall pay to the applicant, or, as the case may be, the patentee and other persons appearing on the register as having an interest in the patent such compensation as may be agreed upon between the Central Government and the applicant, or the patentee and other persons; or, as may, in default of agreement, be determined by the High Court on a reference under section 103 to be just having regard to the expenditure incurred in connection with the invention and, in the case of a patent, the term thereof, the period during which and the manner in which it has already been worked (including the profits made during such period by the patentee or by his licensee whether exclusive or otherwise) and other relevant factors.

Section 103. Reference to High Court of disputes as to use for purposes of Government

(1) Any dispute as to the exercise by the Central Government or a person authorised by it of the powers conferred by section 100, or as to terms for the use of an invention for the purposes of Government thereunder or as to the right of any person to receive any part of a payment made in pursuance of sub-section (3) of that section or as to the amount of compensation payable for the acquisition of an invention or a patent under section 102, may be referred to the High Court by either party to the dispute in such manner as may be prescribed by the rules of the High Court.

(2) In any proceeding under this section to which the Central Government is a party, the Central Government may,-

(a) if the patentee is a party to the proceedings, petition by way of counter-claim for revocation of the patent on any ground upon which a patent may be revoked under section 64; and

(b) whether a patentee is or is not a party to the proceedings, put in issue the validity of the patent without petitioning for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded, tested or tried as is mentioned in section 100, and the disclosure of any document regarding the invention, or of any evidence of the test or trial thereof, would, in the opinion of the Central Government, be prejudicial to the public interest, the disclosure may be made confidentially to the advocate of the other party or to an independent expert mutually agreed upon.

(4) In determining under this section any dispute between the Central Government and any person as to terms for the use of an invention for the purposes of Government, the High Court shall have regard to any benefit or compensation which that person or any person from whom he derive title, may have received, or may be entitled to receive, directly or indirectly in respect of the use of the invention in question for the purposes of Government.

(5) In any proceedings under this section, the High Court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to an official referee, commissioner or an arbitrator on such terms as the High Court may direct, and references to the High Court in the foregoing provisions of this section shall be construed accordingly.

(6) Where the invention claimed in a patent was made by a person who at the time it was made was in the service of the Central Government or of a State Government or was an employee of a Government undertaking and the subject-matter of the invention is certified by the relevant Government or the principal officer of the Government undertaking to be connected with the work done in the course of the normal duties of the Government servant or employee of the Government undertaking, then, notwithstanding anything contained in this section, any dispute of the nature referred to in sub-section (1) relating to the invention shall be disposed of by the Central Government conformably to the provisions of this section so far as may be applicable, but before doing so the Central Government shall give an opportunity to the patentee and such other parties as it considers have an interest in the matter to be heard.

CHAPTER XVIII SUITS CONCERNING INFRINGEMENT OF PATENTS

Section 104. Jurisdiction

No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

Section 104A. Burden of proof in case of suits concerning infringement

[1][(1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,-

(a) the subject matter of the patent is a process for obtaining a new product; or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person deriving title or interest in the patent from him, has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him, first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so.]

[1] Ins. by Act 38 of 2002, s. 43 (w.e.f. 20-5-2003).

Section 105. Power of court to make declaration as to non-infringement

(1) Notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 (47 of 1963), any person may institute a suit for a declaration that the use by him of any process, or the making, use or sale of any article by him does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or the licensee, if it is shown-

(a) that the plaintiff has applied in writing to the patentee or exclusive licensee for a written acknowledgment to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and

(b) that the patentee or licensee has refused or neglected to give such an acknowledgment.

(2) The costs of all parties in a suit for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.

(3) The validity of a claim of the specification of a patent shall not be called in question in a suit for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid or invalid.

(4) A suit for a declaration may be brought by virtue of this section at any time [1][after the publication of grant of a patent], and references in this section to the patentee shall be construed accordingly.

[1] Subs. by Act 15 of 2005, s. 57, for certain words (w.e.f. 1-1-2005).

Section 106. Power of court to grant relief in cases of groundless threats of infringement proceedings

(1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs, that is to say-

(a) a declaration to the effect that the threats are unjustifiable;

(b) an injunction against the continuance of the threats; and

(c) such damages, if any, as he has sustained thereby.

(2) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the court may grant to the plaintiff all or any of the reliefs prayed for.

Explanation.-A mere notification of the [1][existence] of a patent does not constitute a threat of proceeding within the meaning of this section.

[1] Subs. by Act 56 of 1974, s. 3 and Sch. II, for "existing" (w.e.f. 20-12-1974).

Section 107. Defences, etc., in suit for infringement

(1) In any suit for infringement of a patent, every ground on which it may be revoked under section 64 shall be available as a ground for defence.

(2) In any suit for infringement of a patent by the making, using or importation of any machine, apparatus or other article or by the using of any process or by the importation, use or distribution of any medicine or drug, it shall be a ground for defence that such making, using, importation or distribution is in accordance with any one or more of the conditions specified in section 47.

Section 107A. Certain acts not to be considered as infringement

[1][For the purposes of this Act,-

(a) any act of making, constructing, [2][using, selling or importing] a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction,[3][use, sale or import] of any product;

(b) importation of patented products by any person from a person [4][who is duly authorised under the law to produce and sell or distribute the product],

shall not be considered as an infringement of patent rights.]

[1] Ins. by Act 38 of 2002, s. 44 (w.e.f. 20-5-2003).

[2] Subs. by Act 15 of 2005, s. 58, for "using or selling" (w.e.f. 1-1-2005).

[3] Subs. by s. 58, ibid., for "use or sale," (w.e.f. 1-1-2005).

[4] Subs. by s. 58, ibid., for "who is duly authorised by the patentee to sell or distribute the product" (w.e.f. 1-1-2005).

Section 108. Reliefs in suits for infringement

[1][(1)] The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

[2][(2) The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.]

[1] S. 108 renumbered as sub-section (1) thereof by Act 38 of 2002, s. 45 (w.e.f. 20-5-2003).

[2] Ins. by s. 45, ibid. (w.e.f. 20-5-2003).

Section 109. Right of exclusive licensee to take proceedings against infringement

(1) The holder of an exclusive licence shall have the like right as the patentee to institute a suit in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.

(2) In any suit for infringement of a patent by the holder of an exclusive licence under sub-section (1), the patentee shall, unless he has joined as a plaintiff in the suit, be added as a defendant, but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

Section 110. Right of licensee under section 84 to take proceedings against infringement

Any person to whom a licence has been granted under section 84 shall be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and, if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant; but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

Section 111. Restriction on power of court to grant damages or account of profits for infringement

(1) In a suit for infringement of a patent, damages or an account of profits shall not be granted against the defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that the patent existed.

Explanation.-A person shall not be deemed to have been aware or to have had reasonable grounds for believing that a patent exists by reason only of the application to an article of the word "patent", "patented" or any word or words expressing or implying that a patent has been obtained for the article, unless the number of the patent accompanies

the word or words in question.

(2) In any suit for infringement of a patent the court may, if it thinks fit, refuse to grant any damages or an account of profits in respect of any infringement committed after a failure to pay any renewal fee within the prescribed period and before any extension of that period.

(3) Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages or account of profits shall be granted in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment, unless the court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

(4) Nothing in this section shall affect the power of the court to grant an injunction in any suit for infringement of a patent.

Section 112. Restriction on power of court to grant injunction in certain cases

[Restriction on power of court to grant injunction in certain cases.] Omitted by the Patents (Amendment) Act, 2002 (38 of 2002), s. 46 (w.e.f. 20-5-2003).

Section 113. Certificate of validity of specification and costs of subsequent suits for infringement thereof

[1][(1) If in any proceedings before [2]*** a High Court for the revocation of a patent under section 64 and section 104, [3]***, the validity of any claim of a specification is contested and that claim is found by [2]*** the High Court to be valid, [2]*** the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.]

(2) Where any such certificate has been granted, then, if in any subsequent suit before a court for infringement of that claim of the patent or in any subsequent proceeding for revocation of the patent in so far as it relates to that claim, the patentee or other person relying on the validity of the claim obtains a final order or judgment in his favour, he shall be entitled to an order for the payment of his full costs, charges and expenses of an incidental to any such suit or proceeding properly incurred so far as they concern the claim in respect of which the certificate was granted, unless the court trying the suit or proceeding otherwise directs:

Provided that the costs as specified in this sub-section shall not be ordered when the party disputing the validity of the claim satisfies the court that he was not aware of the grant of the certificate when he raised the dispute and withdrew forthwith such defence when he became aware of such a certificate.

[4][(3) Nothing contained in this section shall be construed as authorising the courts [5]*** hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein.]

[1] Subs. by Act 15 of 2005, s. 59, for sub-section (1) (w.e.f. 2-4-2007).
[2] The words "the Appellate Board or" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).
[3] The words "as the case may be" omitted by s. 13, ibid. (w.e.f. 4-4-2021).
[4] Subs. by Act 15 of 2005, s. 59, for sub-section (3) (w.e.f. 2-4-2007).
[5] The words "or the Appellate Board" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).

Section 114. Relief for infringement of partially valid specification

(1) If in proceedings for infringement of a patent it is found that any claim of the specification, being a claim in respect of which infringement is alleged, is valid, but that any other claim is invalid, the court may grant relief in respect of any valid claim which is infringed:

Provided that the court shall not grant relief except by way of injunction save in the circumstances mentioned in sub-section (2).

(2) Where the plaintiff proves that the invalid claim was framed in good faith and with reasonable skill and knowledge, the court shall grant relief in respect of any valid claim which is infringed subject to the discretion of the court as to costs and as to the date from which damages or an account of profits should be reckoned, and in exercising such discretion the court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

Section 115. Scientific advisers

(1) In any suit for infringement or in any proceeding before a court under this Act, the court may at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser

to assist the court or to inquire and report upon any such question of fact or of opinion (not involving a question of interpretation of law) as it may formulate for the purpose.

(2) The remuneration of the scientific adviser shall be fixed by the court and shall include the costs of making a report and a proper daily fee for any day on which the scientific adviser may be required to attend before the court, and such remuneration shall be defrayed out of moneys provided by Parliament by law for the purpose.

CHAPTER XIX APPEALS

Section 116. Appellate Board

[Appellate Board.] Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), s. 13 (w.e.f. 4-4-2021).

Section 117. Staff of Appellate Board

[Staff of Appellate Board.] Omitted by s. 13, ibid. (w.e.f. 4-4-2021).

Section 117A. Appeals to [1][High Court]

(1) Save as otherwise expressly provided in sub-section (2), no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.

(2) An appeal shall lie to the [1][High Court] from any decision, order or direction of the Controller of Central Government under section 15, section 16, section 17, section 18, section 19,[2][section 20, sub-section (4) of section 25, section 28], section 51, section 54, section 57, section 60, section 61, section 63, section 66, sub-section (3) of section 69, section 78, sub-sections (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction appealed against and by such fees as may be prescribed.

(4) Every appeal shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller or the Central Government or within such further time as the [3][High Court] may, in accordance with the rules made by it, allow.

[1] Subs. by s. 13, ibid., for "Appellate Board" (w.e.f. 4-4-2021).
[2] Subs. by Act 15 of 2005, s. 61, for "section 20, section 25, section 27, section 28" (w.e.f. 2-4-2007).
[3] Subs. by Act 33 of 2021, s. 13, for "Appellate Board" (w.e.f. 4-4-2021).

Section 117B. Procedure and powers of Appellate Board

[Procedure and powers of Appellate Board.] Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), s. 13 (w.e.f. 4-4-2021).

Section 117C. Bar of jurisdiction of courts, etc

[Bar of jurisdiction of courts, etc.] Omitted by s. 13, ibid. (w.e.f. 4-4-2021).

Section 117D. Procedure for application for rectification, etc., before Appellate Board

[Procedure for application for rectification, etc., before Appellate Board.] Omitted by the Tribunals Reforms Act, s. 13, ibid. (w.e.f. 4-4-2021).

Section 117E. Appearance of Controller in legal proceedings

(1) The Controller shall have the right to appear and be heard-

(a) in any legal proceedings before the [1][High Court] in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the patent office is raised;

(b) in any appeal to the [1][High Court] from an order of the Controller on an application for grant of a patent-

(i) which is not opposed, and the application is either refused by the Controller or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Controller considers that his appearance is necessary in the public interest,

and the Controller shall appear in any case if so directed by the [1][High Court].

(2) Unless the [1][High Court] otherwise directs, the Controller may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in

issue or of the grounds of any decision given by him or of the practice of the patent office in like cases, or of other matters relevant to the issues and within his knowledge as the Controller may deem it necessary, and such statement shall be evidence in the proceeding.

[1] Subs. by Act 33 of 2021, s. 13, for "Appellate Board" (w.e.f. 4-4-2021).

Section 117F. Costs of Controller in proceedings before Appellate Board

[Costs of Controller in proceedings before Appellate Board.] Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), s. 13 (w.e.f. 4-4-2021).

Section 117G. Transfer of pending proceedings to Appellate Board

[Transfer of pending proceedings to Appellate Board.] Omitted by s. 13, ibid. (w.e.f. 4-4-2021).

Section 117H. Power of Appellate Board to make rules

[Power of Appellate Board to make rules.] Omitted by s. 13, ibid. (w.e.f. 4-4-2021).

CHAPTER XX PUNISHMENTS

Section 118. Contravention of Secrecy provisions relating to certain inventions

If any person fails to comply with any direction given under section 35 [1][or makes or causes to be made an application for the grant of a patent in contravention of section 39], he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

[2][Provided that in the case of contravention of section 39, if in the opinion of the Central Government the invention was not relevant for defence purpose or atomic energy at the time of such contravention, the provisions contained in this section shall not apply.]

[1] Ins. by Act 38 of 2002, s. 48 (w.e.f. 20-5-2003).
[2] Ins. by Act 8 of 2026, s. 2 and Sch. (w.e.f. 1-6-2026).

Section 119. Falsification of entries in register, etc

[Falsification of entries in register, etc.] Omitted by the Jan Vishwas (Amendment of Provision) Act, 2026 (8 of 2026), s. 2 and Sch. (w.e.f. 1-6-2026).

Section 120. Unauthorised claim of patent rights

If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, [1][he shall be liable to penalty which may extend to ten lakh rupees, and in case of the continuing claim, a further penalty of one thousand rupees for every day after the first during which such claim continues].

Explanation l.-For the purposes of this section, a person shall be deemed to represent-

(a) that an article is patented in India if there is stamped, engraved or impressed on, or otherwise applied to, the article the word "patent" or "patented" or some other word expressing or implying that a patent for the article has been obtained in India;

(b) that an article is the subject of an application for a patent in India, if there are stamped, engraved or impressed on, or otherwise applied to, the article the words "patent applied for", "patent pending", or some other words implying that an application for a patent for the article has been made in India.

Explanation 2.-The use of words "patent", "patented", "patent applied for", "patent pending" or other words expressing or implying that an article is patented or that a patent has been applied for shall be deemed to refer to a patent in force in India, or to a pending application for a patent in India, as the case may be, unless there is an accompanying indication that the patent has been obtained or applied for in any country outside India.

[1] Subs. by Act 18 of 2023, s. 2 and Sch. for certain words (w.e.f. 01-08-2024).

Section 121. Wrongful use of words "patent office"

[Wrongful use of words "patent office".] Omitted by the Jan Vishwas (Amendment of Provisions) Act, 2023 (18 of 2023), s. 2 and Sch. (w.e.f. 01-08-2024).

Section 122. Refusal or failure to supply information

(1) If any person refuses or fails to furnish-

(a) to the Central Government any information which he is required to furnish under sub-section (5) of section 100,

(b) to the Controller any information or statement which he is required to furnish by or under section 146,

[1][he shall be liable to penalty which may extend to one lakh rupees, and in case of the continuing refusal or failure, a further penalty of one thousand rupees for every day after the first during which such refusal or failure continues.]

(2) If any person, being required to furnish any such information as is referred to in sub-section (1), furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true, [2][he shall be liable to penalty for a sum equal to one half per cent. of the total sale or turnover, as the case may be, of business or of the gross receipts in profession as computed in the audited accounts of such person, or a sum equal to five crore rupees, whichever is less].

[1] Subs. by s. 2 and Sch., ibid., for the long line (w.e.f. 01-08-2024).
[2] Subs. by s. 2 and Sch., ibid., for certain words (w.e.f. 01-08-2024).

Section 123. Practice by non-registered patent agents

If any person contravenes the provisions of section 129, [1][he shall be liable to penalty, which may extend to five lakh rupees, and in case of the continuing default, a further penalty of one thousand rupees for every day after the first during which such default continues].

[1] Subs. by s. 2 and Sch., ibid., for certain words (w.e.f. 01-08-2024).

Section 124. Offences by companies

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Section 124A. Adjudication of penalties

[1][The Controller may, by an order, authorise an officer referred to in section 73, to be the adjudicating officer for holding an inquiry and imposing penalty under the provisions of this Act, in the manner as may be prescribed, after giving the person concerned a reasonable opportunity of being heard.

[1] Ins. by Act 18 of 2023, s. 2 and Sch. (w.e.f. 01-08-2024).

Section 124B. Appeal

(1) Whoever aggrieved by an order of the adjudicating officer under section 124A may prefer an appeal to the appellate authority, who shall be an officer at least one rank above the adjudicating officer, within a period of sixty days from the date of receipt of the order, as the Central Government may by notification authorise in this behalf.

(2) Every appeal under this section shall be preferred in such form and manner as may be prescribed.

(3) An appeal may be admitted after the expiry of the period of sixty days if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(4) No appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(5) The appellate authority referred to in sub-section (1) shall dispose of the appeal within sixty days from the date of filing the appeal.

(6) Notwithstanding anything contained in this Act, if the person fails to comply with the order of the adjudicating officer under section 124A or the order of the appellate authority under this section, as the case may be, within ninety days of such order, he shall, in addition to the penalty, be punishable with fine of one lakh rupees or imprisonment for a term which may extend to one year, or with both.]

CHAPTER XXI PATENT AGENTS

Section 125. Register of patent agents

[1][(1) The Controller shall maintain a register to be called the register of patent agents in which shall be entered the names, addresses and other relevant particulars, as may be prescribed, of all persons qualified to have their names so entered under section 126.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patent agents in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.]

[1] Subs. by Act 38 of 2002, s. 52, for s. 125 (w.e.f. 20-5-2003).

Section 126. Qualifications for registration as patent agents

(1) A person shall be qualified to have his name entered in the register of patent agents if he fulfils the following conditions, namely:-

(a) he is a citizen of India;

(b) he has completed the age of 21 years;

(c) he has obtained a [1][degree in science, engineering or technology from any University established under law for the time being in force] in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition,-

[2]* * * * *

(ii) has passed the qualifying examination prescribed for the purpose; [3][or]

[3][(iii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration;]

(d) he has paid such fee as may be prescribed.

[4][(2) Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of [5][the Patents (Amendment) Act, 2005 (15 of 2005)] shall be entitled to continue to be, or when required to be re-registered, as a patent agent, on payment of the fees as may be prescribed.]

[1] Subs. by Act 38 of 2002, s. 53 for "degree from any University" (w.e.f. 20-5-2003).

[2] Sub-clause (i) omitted by Act 15 of 2005, s. 67 (w.e.f. 1-1-2005).

[3] Ins. by Act 38 of 2002, s. 53 (w.e.f. 20-5-2003).

[4] Subs. by s. 53, ibid., for sub-section (2) (w.e.f. 20-5-2003).

[5] Subs. by Act 15 of 2005, s. 67, for "the Patents (Amendment) Act, 2002 (38 of 2002)" (w.e.f. 1-1-2005).

Section 127. Rights of patent agents

Subject to the provisions contained in this Act and in any rules made thereunder, every patent agent whose name is entered in the register shall be entitled:-

(a) to practice before the Controller; and

(b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

Section 128. Subscription and verification of certain documents by patent agents

(1) [1]*** all applications and communications to the Controller under this Act may be signed by a patent agent authorised in writing in this behalf by the person concerned.

[2]* * * * *

[1] The words, brackets and figure "Subject to the provisions contained in sub-section (2) and to any rules made under this Act," omitted by Act 38 of 2002, s. 54 (w.e.f. 20-5-2003).

[2] Sub-section (2) omitted by s. 54, ibid. (w.e.f. 20-5-2003).

Section 129. Restrictions on practice as patent agents

(1) No person, either alone or in partnerships with any other person, shall practise, describe or hold himself out as a patent agent, or permit himself to be so described or held out, unless he is registered as a patent agent or, as the case may be, unless he and all his partners are so registered.

(2) No company or other body corporate shall practise, describe itself or hold itself out as patent agents or permit itself to be so described or held out.

Explanation.-For the purposes of this section, practise as a patent agent includes any of the following acts, namely:-

(a) applying for or obtaining patents in India or elsewhere;

(b) preparing specifications or other documents for the purposes of this Act or of the patent law of any other country;

(c) giving advice other than of a scientific or technical nature as to the validity of patents or their infringement.

Section 130. Removal from register of patent agents and restoration

(1) The [1][Controller] may remove the name of any person from the register when [2][he] is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as [2][he] thinks fit to make-

(i) that his name has been entered in the register by error or on account of misrepresentation or suppression of material fact;

(ii) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which in the opinion of the [1][Controller] renders him unfit to be kept in the register.

(2) The [1][Controller] may, on application and on sufficient cause being shown, restore to the register the name of any person removed therefrom.

[1] Subs. by Act 38 of 2002, s. 55 for "Central Government" (w.e.f. 20-5-2003).

[2] Subs. by s. 55, ibid., for "it" (w.e.f. 20-5-2003).

Section 131. Power of Controller to refuse to deal with certain agents

(1) Subject to any rules made in this behalf, the Controller may refuse to recognise as agent in respect of any business under this Act-

(a) any individual whose name has been removed from, and not restored to, the register;

(b) any person who has been convicted of an offence under section 123;

(c) any person, not being registered as a patent agent, who in the opinion of the Controller is engaged wholly or mainly in acting as agent in applying for patents in India or elsewhere in the name or for the benefit of the person by whom he is employed;

(d) any company or firm, if any person whom the Controller could refuse to recognise as agent in respect of any business under this Act, is acting as a director or manager of the company or is a partner in the firm.

(2) The Controller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in India.

Section 132. Savings in respect of other persons authorised to act as agents

Nothing in this Chapter shall be deemed to prohibit-

(a) the applicant for a patent [1]*** from drafting any specification or appearing or acting before the Controller; or

(b) an advocate, not being a patent agent, from taking part in any [2][hearing before the Controller on behalf of a party who is taking part in any proceedings under this Act].

[1] The words "or any person, not being a patent agent, who is duly authorised by the applicant" omitted by s. 56, ibid. (w.e.f. 20-5-2003).

[2] Subs. by s. 56, ibid., for certain words (w.e.f. 20-5-2003).

CHAPTER XXII INTERNATIONAL ARRANGEMENTS

Section 133. Convention countries

[1][Any country, which is a signatory or party or a group of countries, union of countries or inter-governmental organisations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights shall be a convention country or convention countries for the purposes of this Act.]

[1] Subs. by Act 15 of 2005, s. 68, for section 133 (w.e.f. 1-1-2005).

Section 134. Notification as to countries not providing for reciprocity

Where any country specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the grant of patents and the protection of patent rights as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other

person,-

(a) to apply for the grant of a patent or be registered as the proprietor of a patent;

(b) to be registered as the assignee of the proprietor of a patent; or

(c) to apply for a licence or hold any licence under a patent granted under this Act.

Section 135. Convention applications

(1) Without prejudice to the provisions contained in section 6, where a person has made an application for a patent in respect of an invention in a convention country (hereinafter referred to as the "basic application"), and that person or the legal representative or assignee of that person makes an application under this Act for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification, being a claim based on matter disclosed in the basic application, is the date of making of the basic application.

Explanation.-Where applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months referred to in this sub-section shall be reckoned from the date on which the earlier or earliest of the said applications was made.

(2) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to the provisions contained in section 10, be made in respect of those inventions at any time within twelve months from the date of the earliest of the said applications for protection;

Provided that the fee payable on the making of any such application shall be the same as if separate applications have been made in respect of each of the said inventions, and the requirements of clause (b) of sub-section (1) of section 136 shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

[1][(3) In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application:

Provided that a request for examination under section 11B shall be made only for one of the applications filed in India.]

[1] Ins. by Act 15 of 2005, s. 69 (w.e.f. 1-1-2005).

Section 136. Special provisions relating to convention applications

(1) Every convention application shall-

(a) be accompanied by a complete specification; and

(b) specify the date on which and the convention country in which the application for protection, or as the case may be, the first of such applications was made; and

(c) state that no application for protection in respect of the invention had been made in a convention country before that date by the applicant or by any person from whom he derives title.

(2) Subject to the provisions contained in section 10, a complete specification filed with a convention application may include claims in respect of developments of, or additions to, the invention in respect of which the application for protection was made in a convention country, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

(3) A convention application shall not be post-dated under sub-section (1) of section 17 to a date later than the date on which under the provisions of this Act the application could have been made.

Section 137. Multiple priorities

(1) Where two or more applications for patents in respect of inventions have been made in one or more convention countries and those inventions are so related as to constitute one invention, one application may be made by any or all of the persons referred to in sub-section (1) of section 135 within twelve months from the date on which the earlier or earliest of those applications was made, in respect of the inventions disclosed in the specifications which accompanied the basic applications.

(2) The priority date of a claim of the complete specification, being a claim based on matters disclosed in one or more of the basic applications, is the date on which that matter was first so disclosed.

(3) For the purposes of this Act, a matter shall be deemed to have been disclosed in a basic application for protection

in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of a prior art) in that application, or any documents submitted by the applicant for protection in support of and at the same time as that application, but no account shall be taken of any disclosure effected by any such document unless a copy of the document is filed at the patent office with the convention application or within such period as may be prescribed after the filing of that application.

Section 138. Supplementary provisions as to convention applications

[1][(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country as referred to in section 133 verified to the satisfaction of the Controller, within the prescribed period from the date of communication by the Controller.]

(2) If any such specification or other document is in a foreign language, a translation into English of the specification or document, verified by affidavit or otherwise to the satisfaction of the Controller, shall be [2][furnished when required by the controller].

(3) For the purposes of this Act, the date on which an application was made in a convention country is such date as the Controller is satisfied by certificate of the official chief or head of the patent office of the convention country or otherwise, is the date on which the application was made in that convention country.

[3][(4) An international application filed under the Patent Cooperation Treaty designating India shall have effect of filing an application for patent under section 7, section 54 and section 135, as the case may be, and the title, description, claim and abstract and drawings, if any, filed in the international application shall be taken as complete specification for the purposes of this Act.

(5) The filing date of an application for patent and its complete specification processed by the patent office as designated office shall be the international filing date accorded under the Patent Cooperation Treaty.

(6) Amendment, if any, proposed by the applicant for an international application designating India or designating and electing India before international searching authority or preliminary examination authority shall, if the applicant so desires, be taken as an amendment made before the patent office.]

[1] Subs. by Act 15 of 2005, s. 70, for sub-section (1) (w.e.f. 1-1-2005).
[2] Subs. by Act 38 of 2002, s. 58, for "annexed to the specification or document" (w.e.f. 20-5-2003).
[3] Ins. by s. 58, ibid. (w.e.f. 20-5-2003).

Section 139. Other provisions of Act to apply to convention applications

Save as otherwise provided in this Chapter, all the provisions of this Act shall apply in relation to a convention application and a patent granted in pursuance thereof as they apply in relation to an ordinary application and a patent granted in pursuance thereof.

CHAPTER XXIII MISCELLANEOUS

Section 140. Avoidance of certain restrictive conditions

(1) It shall not be lawful to insert-

(i) in any contract for or in relation to the sale or lease of a patented article or an article made by a patented process; or

(ii) in a licence to manufacture or use a patented article; or

(iii) in a licence to work any process protected by a patent, a condition the effect of which may be-

(a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor, or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees, any article other than the patented article or an article other than that made by the patented process; or

(b) to prohibit the purchaser, lessee or licensee from using, or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the patented article or an article other than that made by the patented process, which is not supplied by the vendor, lessor or licensor or his nominee; or

(c) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee to use any process other than the patented process,

and any such condition shall be void.

[1][(d) to provide exclusive grant back, prevention to challenges to validity of patent and coercive package licensing,]

(2) A condition of the nature referred to in clause (a) or clause (b) or clause (c) of sub-section (1) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the patented article or process.

(3) In proceedings against any person for the infringement of a patent, it shall be a defence to prove that at the time of the infringement there was in force a contract relating to the patent and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall-

(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;

(b) validate a contract which, but for this section, would be invalid;

(c) affect a condition in a contract for the lease of, or licence to use, a patented article, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required or to put or keep it in repair.

[2]* * * * *

[1] Ins. by Act 38 of 2002, s. 59 (w.e.f. 20-5-2003).

[2] Sub-section (5) omitted by Act 38 of 2002, s. 59 (w.e.f. 20-5-2003).

Section 141. Determination of certain contracts

(1) Any contract for the sale or lease of a patented article or for licence to manufacture, use or work a patented article or process, or relating to any such sale, lease or licence [1]*** may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the contract or in any other contract, be determined by the purchaser, lessee, or licensee, as the case may be, of the patent on giving three months' notice in writing to the other party.

(2) The provisions of this section shall be without prejudice to any right of determining a contract exercisable apart from this section.

[1] The words "whether made before or after the commencement of this Act," omitted by Act 38 of 2002, s. 60 (w.e.f. 20-5-2003).

Section 142. Fees

(1) There shall be paid in respect of the grant of patents and applications therefor, and in respect of other matters in relation to the grant of patents under this Act, such fees as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Controller, the Controller shall not do that act until the fee has been paid.

[1][(3) Where a fee is payable in respect of the filing of a document at the patent office, the fee shall be paid along with the document or within the prescribed time and the document shall be deemed not to have been filed at the office if the fee has not been paid within such time.]

(4) Where a principal patent is granted later than two years from the date of filing of [2][the application], the fees which have become due in the meantime may be paid within a term of three months from the date of the recording of the patent in the register [3][or within the extended period not later than nine months from the date of recording].

[1] Subs. by Act 38 of 2002, s. 61 for sub-section (3) (w.e.f. 20-5-2003).

[2] Subs. by Act 15 of 2005, s. 71, for "the complete specification" (w.e.f. 1-1-2005).

[3] Ins. by Act 38 of 2002, s. 61 (w.e.f. 20-5-2003).

Section 143. Restrictions upon publication of specification

[1][Subject to the provisions of Chapter VII, an application for a patent, and any specification file in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller before the expiration of the period prescribed under sub-section (1) of section 11A or before the same is open to public inspection in pursuance of sub-section (3) of section 11A or section 43.]

[1] Subs. by Act 15 of 2005, s. 72, for section 143 (w.e.f. 1-1-2005).

Section 144. Reports of Examiners to be confidential

The reports of examiners to the Controller under this Act shall not be open to public inspection or be published by the Controller; and such reports shall not be liable to production or inspection in any legal proceeding unless the court certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed.

Section 145. Publication of official journal

[1][The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder.]

[1] Subs. by s. 73, ibid., for section 145 (w.e.f. 1-1-2005).

Section 146. Power of Controller to call for information from patentees

(1) The Controller may, at any time during the continuance of the patent, by notice in writing, require a patentee or a licensee, exclusive or otherwise, to furnish to him within two months from the date of such notice or within such further time as the Controller may allow, such information or such periodical statements as to the extent to which the patented invention has been commercially worked in India as may be specified in the notice.

(2) Without prejudice to the provisions of sub-section (1), every patentee and every licensee (whether exclusive or otherwise) shall furnish in such manner and form and at such intervals (not being less than six months) as may be prescribed statements as to the extent to which the patented invention has been worked on a commercial scale in India.

(3) The Controller may publish the information received by him under sub-section (1) or sub-section (2) in such manner as may be prescribed.

Section 147. Evidence of entries, documents, etc

(1) A certificate purporting to be signed by the Controller as to any entry, matter or thing which he is authorised by this Act or any rules made thereunder to make or do, shall be prima facie evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or omitted to be done.

(2) A copy of any entry in any register or of any document kept in the patent office or of any patent, or an extract from any such register or document, purporting to be certified by the Controller and sealed with the seal of the patent office shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the original.

(3) The Controller or any other officer of the patent office shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special causes.

Section 148. Declaration by infant, lunatic, etc

(1) If any person is, by reason of minority, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such things in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Section 149. Service of notices, etc. by post

Any notice required or authorised to be given by or under this Act, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.

Section 150. Security for costs

If any party by whom notice of any opposition is given under this Act or by whom application is made to the Controller for the grant of a licence under a patent neither resides nor carries on business in India, the Controller may require him to give security for the costs of the proceedings, and in default of such security being given may treat the opposition or application as abandoned.

Section 151. Transmission of orders of courts to Controller

(1) Every order of [1][the High Court [2]***] on a petition for revocation, including orders granting certificates of validity of any claim, shall be transmitted by [1][the High Court [2]***] to the Controller who shall cause an entry thereof and reference thereto to be made in the register.

(2) Where in any suit for infringement of a patent or in any suit under section 106 the validity of any claim or a specification is contested and that claim is found by the court to be valid or not valid, as the case may be, the court shall transmit a copy of its judgment and decree to the Controller who shall on receipt thereof cause an entry in relation to such proceeding to be made in the prescribed manner in a supplemental record.

(3) The provisions of sub-sections (1) and (2) shall also apply to the court to which appeals are preferred against decisions of [3][the courts] referred to in those sub-sections.

[1] Subs. by Act 15 of 2005, s. 74, for "the High Court" (w.e.f. 2-4-2007).

[2] The words "or the Appellate Board" omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).

[3] Subs. by Act 33 of 2021, s. 13, for "the Appellate Board or the courts, as the case may be" (w.e.f. 4-4-2021).

Section 152. Transmission of copies of specification, etc., and inspection thereof

[Transmission of copies of specification, etc., and inspection thereof.] Omitted by the Patents (Amendment) Act, 2005 (15 of 2005), s. 75 (w.e.f. 1-1-2005).

Section 153. Information relating to Patents

A person making a request to the Controller in the prescribed manner for information relating to any such matters as may be prescribed as respects any patent specified in the request or as respects any application for a patent so specified shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.

Section 154. Loss or destruction of Patents

If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on application made in the prescribed manner and on payment of the prescribed fee, cause a duplicate thereof to be sealed and delivered to the applicant.

Section 155. Reports of Controller to be placed before Parliament

The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.

Section 156. Patent to bind Government

Subject to the other provisions contained in this Act, a patent shall have to all intents the like effect as against Government as it has against any person.

Section 157. Right of Government to sell or use forfeited articles

Nothing in this Act shall affect the power of the Government or of any person deriving title directly or indirectly from the Government to sell or use any articles forfeited under any law for the time being in force.

Section 157A. Protection of security of India

[1][Notwithstanding anything contained in this Act, the Central Government shall-

(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of the security of India;

(b) take any action including the revocation of any patent which it considers necessary in the interest of the security of India by issue of a notification in the Official Gazette to that effect.

Explanation.-For the purposes of this section, the expression "security of India" includes any action necessary for the security of India which-

(i) relates to fissionable materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) is taken in time of war or other emergency in international relations.]

[1] Subs. by Act 38 of 2002, s. 63, for section 157A (w.e.f. 20-5-2003).

Section 158. Power of High Courts to make rules

The High Court may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act.

Section 159. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:-

(i) the form and manner in which any application for a patent, any specifications or drawings and any other application or document may be filed in the patent office;

[1][(ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2) of section 8;

(ib) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (ii) of the proviso to sub-section (4) of section 10;

(ic) the period for which application for patent shall not be open to the public under sub-section (1) and the manner in which the applicant may make a request to the Controller to publish his application under sub-section (2) of section 11A;

(id) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B;

(ie) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.]

(ii) the time within which any act or thing may be done under this Act, including the manner in which and the time within which any matter may be [2][published] under this Act;

(iii) the fees which may be payable under this Act and the manner [3][and time] of payment of such fees;

(iv) the matters in respect of which the examiner may make a report to the Controller;

[4][(v) the manner in which and the period within which the Controller shall consider and dispose of a representation under sub-section (1) of section 25;

(va) the period within which the Controller is required to dispose of an application under section 39;]

(vi) the form and manner in which and the time within which any notice may be given under this Act;

(vii) the provisions which may be inserted in an order for restoration of a patent for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased;

(viii) the establishment of branch offices of the patent office and the regulation generally of the business of the patent office, including its branch offices;

(ix) the maintenance of the register of patents [3][and the safeguards to be observed in the maintenance of such register in computer floppies, diskettes or any other electronic form] and the matters to be entered therein;

(x) the matters in respect of which the Controller shall have powers of a civil court;

(xi) the time when and the manner in which the register and any other document open to inspection may be inspected under this Act;

(xii) the qualifications of, and the preparation of a roll of, scientific advisers for the purpose of section 115;

[5]* * * * *

(xiii) the manner in which any compensation for acquisition by Government of an invention may be paid;

[6][(xiiia) the manner of holding inquiry and imposing penalty under section 124A;

(xiiib) the form and manner of preferring appeal under sub-section (2) of section 124B;]

(xiv) the manner in which the register of patent agents may be maintained [3][under sub-section (1) of section 125 and the safeguards to be observed in the maintenance of such register of patent agents on computer floppies, diskettes or any other electronic form under sub-section (2) of that section] the conduct of qualifying examinations for patent agents; and matters connected with their practice and conduct, including the taking of disciplinary

proceedings against patent agents for misconduct;

(xv) the regulation of the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and the inspection of indexes and abridgments and other documents;

(xvi) any other matter which has to be or may be prescribed.

(3) The power to make rules under this section shall be subject to condition of the rules being made after previous publications:

[7][Provided that the Central Government may, if it is satisfied that the circumstances exist which render it practically not possible to comply with such condition of previous publication, dispense with such compliance.]

[1] Subs. by Act 15 of 2005, s. 76, for clauses (ia) and (ib) (w.e.f. 1-1-2005).
[2] Subs. by Act 15 of 2005, s. 76, for "advertised" (w.e.f. (1-1-2005).
[3] Ins. by Act 38 of 2002, s. 64 (w.e.f. 20-5-2003).
[4] Subs. by Act 15 of 2005, s. 76, for clause (v) (w.e.f. 1-1-2005).
[5] Cls. (xiia), (xiib) and (xiic) omitted by Act 33 of 2021, s. 13 (w.e.f. 4-4-2021).
[6] Ins. by Act 18 of 2023, s. 2 and Sch. (w.e.f. 01-08-2024).
[7] The proviso added by Act 15 of 2005, s. 76 (w.e.f. 1-1-2005).

Section 160. Rules to be placed before Parliament

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [1][in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[1] Subs. by Act 4 of 1986, s. 2 and the Sch., for certain words (w.e.f. 15-5-1986).

Section 161. Special provisions with respect to certain applications deemed to have been refused under Act 2 of 1911

[Special provisions with respect to certain applications deemed to have been refused under Act 2 of 1911.] Omitted by The Patents (Amendment) Act, 2002 (38 of 2002), s. 65 (w.e.f. 20-5-2003).

Section 162. Repeal of Act 2 of 1911 in so far as it relates to patents and savings

(1) The Indian Patents and Designs Act, 1911, in so far as it relates to patents, is hereby repealed, that is to say, the said Act shall be amended in the manner specified in the Schedule.

[1]* * * * *

(4) The mention of particular matters in this section shall not prejudice the general application of the General Clauses Act, 1897 (10 of 1897), with respect to repeals.

(5) Notwithstanding anything contained in this Act, any suit for infringement of a patent or any proceeding for revocation of a patent, pending in any court at the commencement of this Act, may be continued and disposed of, as if this Act had not been passed.

[1] Sub-sections (2) and (3) omitted by Act 38 of 2002, s. 66 (w.e.f. 20-5-2003).

Section 163. Amendment of Act 43 of 1958

[Amendment of Act 43 of 1958] Omitted by The Patents (Amendment) Act, 2005 (15 of 2005), s. 77 (w.e.f. 1-1-2005).

Schedules

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THE SCHEDULE (official file, page 69)

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