

### GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY

**43. Grant of patents.**—(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.

**44. Amendment of patent granted to deceased applicant.**—Where, at any time after a patent has been 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 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.

**45. Date of patent.**—(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 the date of publication of the application.

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**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.

**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.

**48. Rights of patentees.**—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:

**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, aircrafts 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.

**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 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 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 subsection (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.

**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 licenses 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.

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

**him.**—(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 Appellate Board or 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 Appellate Board or 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 Appellate Board or 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 Appellate Board or 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 Appellate Board or 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.

(4) 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.

**53. Term of patent.**—(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.

**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.

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- (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 or within such extended period as may be prescribed.
- (3) [Omitted by the *Patents (Amendment) Act, 2005*]
- (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 expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.