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Protection of Patent Right in India

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Abstract: ***Intellect is the name for brain – created things. These inventions are referred to as property since they have a high commercial value. Patent can be used to protect inventions as intellectual property if they are new, non-obvious, practical, and enable. In general, the patent holder has thesole authority to forbid or stop others from making use of the protected innovation for commercial purposes. In other words, patent protection prevents anyone from using, distribution importing, or selling the innovation for profit without the patent owner's permission. Use Indian's intellectual property protection rules if you generate any type of intellectual property. This is to prevent theft or unauthorized usage of your property. Is your intellectual property product of an invention or innovation? It's important to comprehend all of India's patent protection regulations. An agreement between the inventor and the government is what is referred to as a patent. Excluding others from producing, selling, offering to sell, licensing, and improperly exploiting any of the rights granted to the patent owner is a monopoly privilege. A products or a procedureis given patent protection. Patent are territorial in nature since they are protected by a national government. Only in the nation in which the patent is protected are patent rights enforceable. There is no such things as a "global patent" that is valid everywhere. The length of a patent's protection varies depending on the nation, although it typically lasts 20 years from the date of filing. Patents are not awarded so that an inventor or applicant can gain from monopoly rights, but rather so that the innovation can benefit the public and advance the field of research and development.***
Keywords: patent right, protection of invention, government monopoly, development.

I. INTRODUCTION

Patent rights in India are protected under the Indian patent Act, 1970. The Act provides for thegrant of patents for inventions that are novel, non- obvious, and industrially applicable. Once granted, a patent provides the inventor with the exclusive right to prevent others from making, using, selling, or importing the patented invention for a certain period of time. To obtain patentprotection in India, an application must be filed with the Indian patent office, which has offices in four cities: Delhi, Mumbai, Chennai, and Kolkata. The application must contain a complete description of the invention and the claims that define the scope of the patent protection sought. The Indian patents act provides for both substantive and procedural examinations of patent applications. During the substantive examination, the patent office examines the application to determine if the invention meets the requirements of novelty, non-obviousness, and industrial applicability. If the patent office finds the application to be in order, a patent is granted. Once a patent is granted, the patent owner has the exclusive right to prevent others from making, using, selling, or importing the patented invention. If someone infringes on the patent, the patent owner can take legal action to stop the infringement and seek damages for any losses suffered. Overall, the Indian patent system provides strong protection for patent system provides strong protection for patent rights, and the India government has taken steps to improve the system in recent years. However, there are still challenges that patent owners may face, such as long processing times and a backlog of pending applications.

II. PATENT PRODECTION IN INDIA

Patent protection in India governed by the patent Act, 1970 and the patents rules, 2003. The Indian patent office (IPO) is responsible for granting patents in India. Under the Indian patent system, a patent is granted to an invention for a new and use full invention, which has novelty, non – obviousness, and industrial applicability. The term of a patent in India is 20 years from thedate of filing of the patent application, subject to payment of annual renewal fees.In order to obtain a patent in India, an inventor must file a patent application with the IPO. The applicationshould contain a complete specification, which provides a full and detailed description of the invention, alone with any drawings and claims. The IPO will examine the application and determine whether the invention meets the requirements for patentability under the patents Act. It is important to note that India has certain restriction on patentability, particularly in the areas of pharmaceuticals and software. India has also implemented provisions for compulsory licensing of patents, which allows the government to allow third parties to produce and sell a patented invention in certain circumstances, such as for public health reasons. It is important for inventors to be aware of the restrictions and limitations of the Indian patent system when seekingpatent protection.

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Procedural aspect for registration of patent protection in India:

To obtain patent protection in India, an inventor or their authorize representative needs to filea patent application with the Indian patent office (IPO). Here are the steps involved in the process:

1) *Conduct a Patent Search:* Before filing a patent application, it is important to conduct a patent search to ensure that the invention is novel and not already patent in India or elsewhere. This can be done by searching through IPO'S database or through commercial patentdatabases.
2) *Draft a Patent application:* A patent application should include a description of the invention, drawings (if application), claims, and an abstract. It is important to draft theapplication in compliance with the Indian patent Act and the patent rule.
3) *File the Patent Application:* The patent application ca be filed either electronically orphysically at any of the four branches of the IPO. The application must include the prescribed fee, which varies based on the type of application (individual or entity) and thenumber of pages of the application.
4) *Examination of the Patent Application:* After filing the application, the IPO examines the application, the IPO examines the application to determine whether the invention meets the criteria for patentability, including novelty, inventive step, and industrial applicability. TheIPO will also conduct a search for prior art related to the invention.
5) *Publication of the Patent Application:* If the IPO determines for patentability, the application is published in the official patent journal. The application is open for publicinspection after 18 months from the date of filing or priority date, whichever is earlier.
6) *Grant of Patent:* If there are no objections or oppositions to the patent application, the IPO will grant the patent, and the applicant must pay the prescribed fee for the grant. The patentis valid for 20 years from the date of filing of the application, subject to payment of annualrenewal fees.

III. RIGHTS OF PATENTEE

A patentee is a person who is listed in patent register as the current grantee or proprietor of apatent. The term" patentee" refers to the individual to whom the patent has been granted. The patentee has the same rights to exploit the asset or invention as the owner of any movable property.

A. Right Of Patentee Under Section 48

Because the patent is for a product, it gives the patentee the only authority to stop other parties from manufacturing, usingoffering for sale, selling, or importing the product into India for those purposes without the patentee's permission

A method is the subject of a patent, giving the patentee the exclusive right to stop thirdparties from using, offering for sale, selling, or importing the process for those purposes without the patentee's approval.

B. The Following Are The Elaborated Patentee Rights In India

The right of a patentee refers to the exclusive legal rights granted to the owner of a patent. These rights allow the patent holder to prevent others from making, using, selling, or importing an invention without their permission for a certain period, usually 20 years from thedate of filing the patent application.

The rights of a patentee includes:

1) *Right to Exclude Others:* The patentee has the right to exclude others from making, using, selling, or importing the invention without their permission.
2) *Right to License:* The patentee can choose to license the patent to others for a fee or royalty.
3) *Right to Sell:* The patentee can sell the patent or transfer ownership to another party.
4) *Right to Enforce:* The patentee has the right to enforce their patent rights against infringersthrough legal action.
5) *Right to Prevent Importation:* The patentee can prevent the importation of infringingproducts into the country.
6) *Right to Claim Damages:* The patentee can claim damages for any infringement of theirpatent rights.

Overall, the rights of a patentee are designed to protect their invention and provide themwith an opportunity to benefit from their innovation.

C. Infringement Of Patent Right In India

In India, the infringement of patent rights is governed by the patents Act, 1970. According tothe Act, a patentee has the exclusive right to prevent others from making, using, selling, importing, or offering for sale the patented invention without their permission. If someone engages in any of these activities without the permission of the patentee, they may be liable forpatent infringement.

The following actions may constitute patent infringement in India:

1) Making, using, selling, or importing a product or process that is covered by a patent.
2) Offering to sell or use a product or process that is covered by a patent.
3) Importing a product that is made by a process that is covered by a patent.
4) Making, using, selling, or importing a product that is not covered by a patent, but whichis essentially similar to a product that is covered by a patent.

If a patentee believes that their patent rights have been infringed upon, they can take legal action against the infringer. The remedies available to a patentee in India include aninjunction, a damages, and an account of profits. The patentee can also seek an order for the delivery or destruction of the infringing goods.

D. *Remidies Of Patent Right In India*

In India, remedies for patent infringement are provide under the patents act, 1970. Thefollowing are the available remedies:

1) *Injunction:* A patent holder can seek an injunction from the court to restrain the infringing party from using, selling, or importing the infringing product. An injunctioncan be either temporary or permanent.
2) *Damages:* The patent holder can claim damages for the infringement of their patent. Damages can be calculated based on the loss suffered by The patent holder due to the infringement or the profit earned by the infringing party.
3) *Account of Profits:* The court can order the infringing party to provide an account of profits made by them as a result of the infringement.
4) *Declaration:* The patent holder can seek a declaration from the court that theirpatent has been infringed by the other party.
5) *Seizure and Forfeiture:* The court can order the seizure and forfeiture ofinfringement goods and materials used to manufacture them.
6) *Compulsory License:* The court can grant a compulsory license to a third partyto manufacture the patented product in certain circumstances, such as when the patent holder has not made the product available to the public at a reasonable price or when there is a national emergency.

It is important to note that the remedies available to note that the remedies available forpatent infringement in India may vary based on the specific circumstances of each case. It is advisable to consult with a legal professional for advice on the most appropriate course of action.

IV. MATHODOLOGY AND LIMITATION

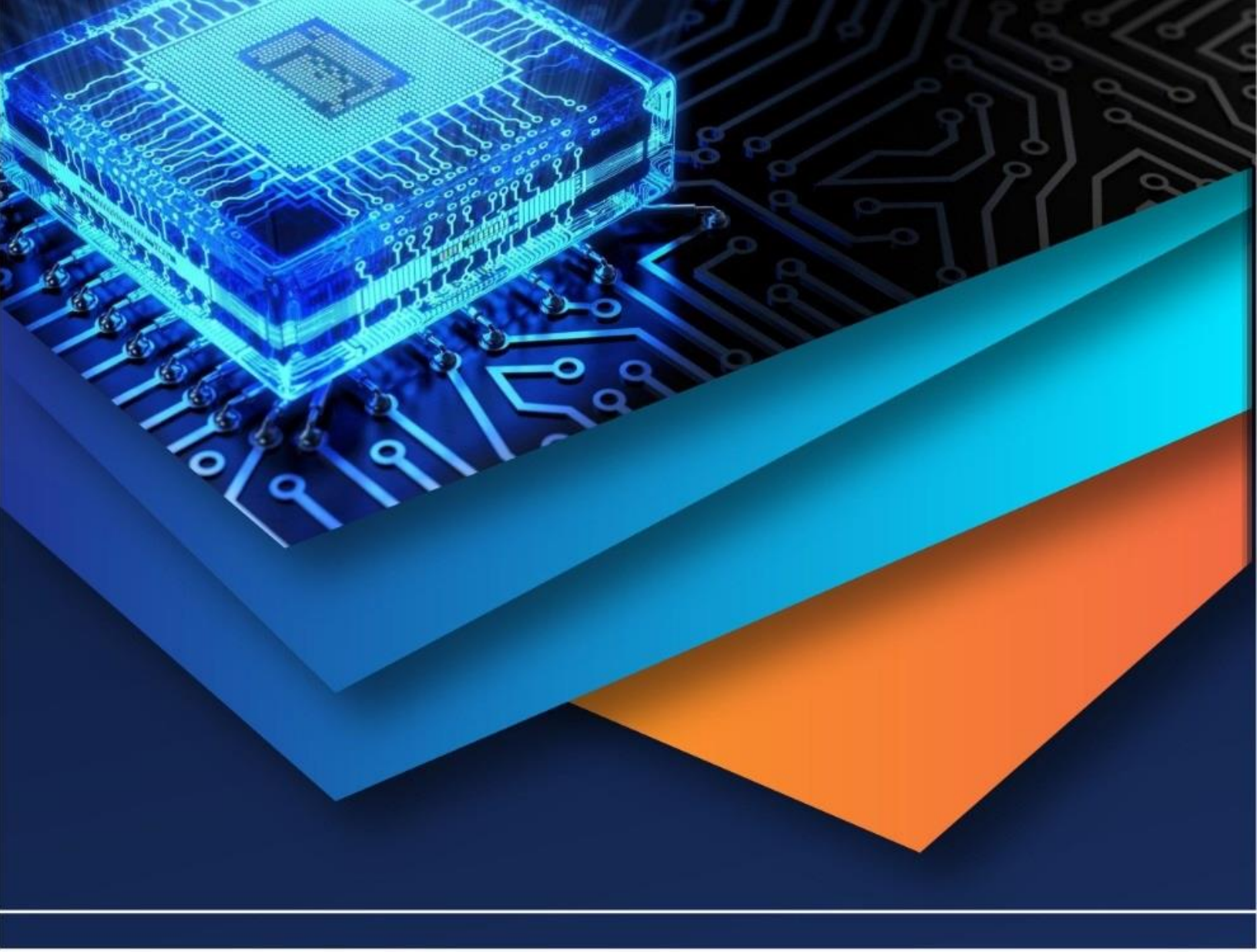
The author of this paper is adopted methods to seek information through secondary sourcesand found certain data from the primary sources which are reflected in the existed secondarysources. The limitations of the study are those are infringed the invention from the product should be protecting and methodology is the effect of patent is gives the owner the right to prevent other from using is the result of study.

V. CONCLUSION

India has a comprehensive legal frame work in place for the protection of patent rights, with the patents act, 1970 serving as the primary legislation governing patents in the country. The act provides for the grant of exclusive rights to inventors for their inventions, subject to certain conditions and limitations Additionally, India is also a signatory to various international treaties and agreements related to patent rights, such as the TRIPS agreement, which further strengthens the legal protection of patents in the country. However, there have been concerns about the effectiveness of the patent system in India, particularly in terms of the time taken for patent examination and the enforcement of patent rights. There have also been debates about the balance between patent rights and publication interest, especially in the areas of pharmaceuticals and health. Overall, while India has made significant progress in strengthening its patent system, there is still scope for improvement in areas such as streaming the patent examination process and providing great clarity on the scope of patent rights.

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