

## **SCOPE OF PATENTS AND PATENT AGENTS UNDER INDIAN PATENT ACT, 1970**

- *Shampa De\**

### **Abstract**

This article focuses on the scope of patents and patents agents in Indian Patent Laws. It also discusses the compatibility of the both. Initially the article starts with the discussion of the basic concept of patent and patents agents. Then it clears the confusion between the patent's agents and patents attorneys. Then it moves forwards with the registration of patents under Indian Patent Act, 1970. After that it focuses on the patentability and non-patentability under Indian patent laws. It also discusses the criteria or the qualifications required by both patents and patents agents to get registered under Indian Patent Act, 1970.

Besides, it has also discussed about the powers of the Controller regarding registration of patents and patents agent. The article has clearly also discussed the removal and restoration of a patent agent. It is very important to study both the concepts together since both are dependent on each other. This article has brought forth how a patent and a patent agent's inter-linked jobs work.

The article is not only restricted to the understanding and gaining knowledge from the concepts but also explained them with the recent landmark cases which brings the compatibility of both the concepts under Indian Patents Act, 1970. Thus, at the end, this article clears the concept of the proposed topic.

### **Introduction**

This article focuses on the concept of patent agents and registration of patents under INDIAN PATENT ACT, 1970 which discusses the concept, rights and qualifications needed for a registered patent agent, criteria for patent registrations, power of the controller regarding revocation, restoring and refusals to deal with certain agents and many more aspects.

### **Patent Agents:**

*Meaning*

Patent agent basically refers to a person who is authorized by the respective law to deal with patent applications. The role of a patent agent is concerning the activity of helping their clients to secure a legal protection for their own invented technologies from any infringement.

#### *Who are patent agents?*

Patent agents are basically patent professionals holding a bachelor's degree in either a physical science or engineering field.

But when it comes to providing legal advice on patent applications, patent attorneys deal with all possible patent laws and practice in order to secure a legal protection to their clients' inventions.

Still confusion arises regarding what is the exact roles of the patent agents and patent attorneys. Thus, the difference between the both lies in their capacity to practice patent laws. The patent agent can only file a patent and advice on patentability and prior art. Whereas the patent attorneys has a legal training and provide legal advice.

#### *Registration of Patents Agents*

Under Section 126 of Indian Patent Act, 1970 the provisions for registration of patent agent is given and any person applying for registration should satisfy the criteria which states that-

The person must be an Indian Citizen and has completed 21 years of age. Along with, he/she should have a degree in physical science or in engineering field or in technology from a recognized university. Besides, most importantly the person should pass the Patent Bar Examination and additionally-

Must have functioned either as an examiner or discharged the functions of the controller u/s 73 for minimum 10 years but may be cease to hold such position at the time of making this application. Also, the payment of fees for such registration should be made accordingly.<sup>1</sup>

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<sup>1</sup> <http://ipindia.nic.in/writereaddata/Portal/ev/sections/ps130.html>.

**Qualification for Registration of Patents**

The qualifications for registration of patents are:

Well, the criteria needed for registration of patents differ from countries to countries. Here, we will discuss about the patentability and non-patentability under Indian Patent Act, 1970.

As mentioned in Section 2(j) of Indian Patents Act, 1970 an invention will mean a new product or a non-obvious innovation or process involving step that have an industrial application.

But on the other hand, non-patentability as mentioned under section 3 and 5 of Indian Patents Act, 1970 includes-

Any frivolous idea, injury to public health, contrary to natural laws, machines that used for gambling, topography of integrated circuits, any perpetual or mere arrangements of machine to give fine quality production cannot be patented in India. Besides, no grants are also not given for inventions relating to uranium, thorium, radium, beryllium, lithium and more as specified by central government.

**Who Can File A Patent?**

However, it should not beneath constitute represent make up comprise the class of inventions that area unit non-patentable as provided under sections three and four of the (Indian) Patents Act, 1970. In India, an application will be filed, either alone or collectively, by true and 1st creator or his party.

**Removal and Restoration of Patents Agent Under Section 130 Of Indian Patent Act**

The provisions for removal of any person from being a registered patent agent under Indian Patent Act, 1970 are provided. It states that-

- If the name of the person has been entered in the Register by error or by any misrepresentation or hiding of any material facts.
- Or he has been accused of any offence and was imprisoned or guilty of any misconduct in his professional capacity.

Now, under section 130(2) power has been given to the controller who may on sufficient cause shown can restore a removed person's name to the register.

**Rights of Patent Agents:**

Section 127 talks about the rights of patents agents which includes the right to practice before the Controller and the right to prepare any document or transact in a business and can discharge such other functions which maybe prescribed in connection with any proceedings before the Controller under this Act.

**Revocation by The Controller**

Even, if the compulsory license has been granted for a patent, however still there is a chance to quash the license as mentioned under section 85 of the Act. It states that -

- Central Government or any other or any other person interested may file a case 2 years from the date of the order of licensing of the patent challenging on the grounds that they are not invented within the territory of Indian or the reasonable requirements of the public is not satisfied or the patent invention is not offered at an affordable price to the public.
- Besides, the nature of the applicant's interest should also be proved as according to section 85 (2)(1).

Thus, revocation of patent licensing can be made by the controller under section 85(3) after if he is satisfied with the points made in accordance with section 85(1).

**Power of Controller to Refuse to Deal with Certain Agents:**

Section 131 of this Act empowers the Controller to refuse to deal with certain agents when-

- The agents are removed from the register and even not restored under section 130(2).
- The agent has been accused of any offence under section 123 or not has been registered as a patent agent under this Act.
- If the Controller refuses to recognize any company or a firm or any business where the person has been an agent for.

**Procedure for Grant of Patent in India**

After filing the applying for the grant of patent, asking for examination is needed to be created for examination of the applying within the Indian government agency at intervals forty-eight months from the date of priority of the applying or from the date of filing of the applying. once the primary examination report is issued, the applier is given a chance to satisfy the objections raised within the report. The applier must accommodate the wants at intervals half dozen months from the issue of the primary examination report which can be extended for any three months on the request of the applier. If the wants of the primary examination report aren't complied with at intervals the prescribed amount of nine; months, then the applying is treated to possess been abandoned by the applier. once the removal of objections and compliance of necessities, the patent is granted and notified within the government agency Journal.

**Case Laws:**

*Narendra Reddy Thappeta vs Union of India & Ors.*<sup>2</sup>

This case relates to a patent agent in Bangalore, Narendra Thappeta, World Health Organization gave up his Indian citizenship and bought United States citizenship. Narendra at now of your time happens to be a patent agent in each India and therefore the under section. Apprehending that his Indian patent agent-ship may well be revoked by the Controller beneath Rule 116(e) of the Patent Rules, Narendra challenged its constitutional validity. He argued that the rule isn't in consonance with Section one hundred thirty of the Patents Act, and so, should be command ultra vires. The state tribunal rejected his petition and command that Indian citizenship may be a demand beneath Section 126, and if one loses it, his patent agent registration could also be revoked beneath Rule 116(e). The Court thus declared that the rule is constitutionally valid.

Interestingly, the Court opined that Narendra 's patent agent standing isn't in risk as no continuing to revoke has been initiated against him, which his patent agent registration is statutorily protected beneath Section 126(2) as he got his registration in 2001. It looks from the Court's words that someone, World Health Organization has registered as a patent agent before 2005 will relinquish his Indian citizenship and still be a patent agent. He will acquire citizenship of another country and maintain his patent agent standing in 2 countries.

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<sup>2</sup> Manu/Ka/1045/2019

*Galatea Ltd. and Ors. vs. Respondent: Diyora and Bhanderi Corporation and Ors.*<sup>3</sup>

In this case, the Appellants filed associate application beneath Section 151 of the Civil Procedure Court asking the Court to remain the infringement suit till the IPAB decides on the revocation petition with regard to the patent in suit. The revocation petition was filed before the infringement proceedings were initiated by the patent holder. Citing Alloy Wobins call of the Supreme Court, the Court control that the Patents Act doesn't offer for keep of the proceedings when a revocation petition is initiated, and so, each the proceedings might proceed at the same time. not like the logos and occupancy Act, the patent statute doesn't have a provision that needs the Court to remain proceedings, and there's thus no have to be compelled to keep the proceedings per the Court.

*The Controller of Patents and Ors. vs. S.P. Chockalingam*<sup>4</sup>

In a judicial writ petition difficult the constitutional validity of Section 126 of the Patents Act, the Madras judicature command that the section is valid and not unconstitutional, which it doesn't conflict with the correct of advocates to observe underneath Section thirty of the Advocates Act. The challenge to the Patents Act primarily rotated round the demand of getting science, technology or engineering background to qualify as a patent agent, and not allowing advocates to hold out patent observe. The Court command within the case that providing for specific needs or qualifications to hold out skilled activities underneath a selected legislation is permissible, which providing for such qualifications underneath the Patents Act, actions underneath that need information of science is constitutionally valid. It declared that such a demand doesn't in any manner deprive rights of advocates to observe underneath Section thirty of the Advocates Act as Section 132 of the Patents Act permits advocates to seem before the federal agency on behalf of purchasers. The Court seen the distinction between practicing as a patent agent, which incorporates drawing up patent applications, linguistic communication them, and presenting them for registration, Associate in Nursingd practicing as an advocate, which incorporates showing before federal agency and representing purchasers, and declared that the correct of advocates to observe before the federal agency is well safeguarded underneath the Patents Act.

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<sup>3</sup> MANU/GJ/0089/2019

<sup>4</sup> MANU/TN/1409/2019

**Conclusion**

Thus, this article has discussed the compatibility and scope of sections of patent registration and registration of patent agent under Indian Patent Act, 1970.

**References**

<http://ipindia.nic.in/writereaddata/Portal/ev/sections/ps130.html>