Patents & design Act-1970

Patents Act, 1970

Background

- Before 1970, patents in India were governed by the **Indian Patents and Designs Act, 1911**.
- The system favored foreign companies, allowing them to hold monopoly rights in India.
- This led to **high drug prices** and poor accessibility, as pharmaceutical companies could patent even small modifications.
- The **Patents Act, 1970** was passed to make patents more balanced and ensure self-reliance. It came into force on **20 April 1972**.

Objectives of the Patents Act

1. To encourage **innovation and research**.
2. To protect the rights of inventors and patent holders.
3. To promote **self-reliance and industrial growth** in India.
4. To ensure that **public interest** is not compromised.
5. To control the **abuse of patent rights**, especially by foreign monopolies (in earlier versions).

Key Provisions

1. Definition of Patent

- A **patent** is an exclusive right granted for an invention, which provides either a new product or process involving an **inventive step** and capable of **industrial application**.

2. Types of Patents Allowed

- **Process patents** were allowed in chemicals, drugs, and food (not product patents).
- For other areas (engineering, mechanical devices, etc.), **product patents** were granted.
- This meant Indian companies could manufacture the same medicine using a different process.

3. Patent Term (Before TRIPS Amendment)

- 14 years for most inventions.
- 7 years for food, medicines, and chemical substances.

4. Exclusions from Patentability

- Atomic energy-related inventions.
- Inventions contrary to public order, morality, or harmful to health and environment.
- Mere discoveries of scientific principles, abstract theories, or methods of agriculture.

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Amendments to Align with TRIPS (WTO Agreement)

- India is a member of the **World Trade Organization (WTO)**, and TRIPS (Trade-Related Aspects of Intellectual Property Rights) required changes:
  - **A. 1999 Amendment**: Introduced a "mailbox" system for filing product patents in drugs and agrochemicals.
  - **B. 2002 Amendment**: Patent term extended to **20 years** for all inventions.
  - **C. 2005 Amendment**: Product patents allowed in pharmaceuticals and chemicals.

Non-Patentable Inventions (Under Section 3 and 4)

- The following are **not patentable** in India:
  - Frivolous or contrary to natural laws
  - Inventions injurious to public health
  - Discovery of a scientific principle or abstract theory
  - New use of a known substance
  - Mere admixtures or arrangements
  - Traditional knowledge
  - Methods of agriculture or horticulture
  - Plants and animals in whole or part
  - Mathematical or business methods, computer programs per se
  - Inventions related to atomic energy

Rights of a Patent Holder

- Exclusive right to **manufacture, use, sell, and license** the invention
- Right to **prevent others** from using the invention without permission
- Right to **sue for infringement**

Compulsory Licensing (Section 84)

- To balance public interest and innovation, the Act allows **compulsory licenses** under certain conditions:
  - Patent not worked in India (i.e., not manufactured here)
  - Reasonable public requirement not met
  - Drug or product not available at a reasonable price

Example:

- Natco Pharma was granted a compulsory license in 2012 to manufacture Sorafenib, a life-saving cancer drug patented by Bayer, due to its high cost.

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Importance in the Pharmaceutical Industry

- Encourages **R&D and innovation** in drug development.
- Provides **market exclusivity** for patented drugs.
- Balances innovation with **affordability** through provisions like **compulsory licensing**.
- Helped India transition from **importer to exporter** of pharmaceuticals.

Designs Act, 1970

Background

- The protection of designs was earlier governed by the **Indian Patents and Designs Act, 1911**.
- In 1970, the Designs Act was separated from the Patents law to provide specialized protection for industrial designs.

Objective of the Designs Act

- To **protect the creativity and aesthetics** of industrial designs.
- To prevent **unauthorized copying or imitation**.
- To promote **industrial growth** by safeguarding visual appeal.

Definition of Design

- According to the Act, **"Design"** means only the features of shape, configuration, pattern, ornament, or composition of lines or colors applied to any article by an industrial process.
    - It must appeal to the **eye**.
    - It should be **new or original**.
    - It should not be a **mere mechanical device** or a **mode of construction**.

Key Provisions

1. Registration of Design

- An application must be made to the Controller of Designs.
- If accepted, the design is entered in the **Register of Designs**.

2. Term of Protection

- Initially **10 years** from registration.
- Renewable for **5 more years** (maximum 15 years).

3. Rights of the Proprietor

- Exclusive right to apply the design to an article.
- Right to prevent unauthorized copying or imitation.

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What Can Be Registered as a Design?

- Features of **shape**, **pattern**, **configuration**, **ornamentation**, or **composition of lines or colors** applied to any article.
- The design must be **new or original** and **appealable to the eye**.
- Must not be purely **functional** — only aesthetic value is protected.

Examples:

- Design of a **syrup bottle**, **inhaler**, **medicine blister pack**
- Packaging designs of **OTC drugs**, **cosmetics**, or **nutraceuticals**

What Cannot Be Registered?

- A design that is not new or original
- Functional aspects of a product
- Designs that are immoral or obscene
- Designs that are contrary to public order
- Trademarks, logos, or artistic works protected under copyright

Significance

- Encourages creativity and protects aesthetic innovation in industries like textiles, jewelry, furniture, packaging, and consumer goods.
- Provides recognition and economic benefit to designers and industrial manufacturers.
- Helps promote Indian industries in international trade by ensuring IPR protection.

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