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INDIA'S PATENT SYSTEM AND THE PATENT COOPERATION TREATY: EVOLUTION AND CHALLENGES

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ABSTRACT

India's patent regime, anchored by the Patents Act of 1970, has experienced notable evolution, particularly after India joined the Patent Cooperation Treaty (PCT) in 1998. This analysis focuses on the interplay between India's domestic patent framework and the PCT, emphasizing the treaty's pivotal role in aligning patent processes and promoting global cooperation in intellectual property protection. The PCT, a key instrument in the international intellectual property system, simplifies obtaining patent protection across multiple countries by offering a unified application process. For India, this has streamlined patent filings, reduced administrative hurdles and opened up broader access to global markets for Indian inventors and companies. The study delves into the historical development of India's patent laws, the procedural advancements brought about by the PCT, and the practical obstacles that have emerged in its adoption. It highlights key benefits of the PCT, such as improved procedural efficiency, cost reductions, and the rise in foreign patent filings in India. Nevertheless, it also uncovers areas that require attention, including the need for faster patent processing and better allocation of resources within the Indian Patent Office to keep pace with rising demand. In short, the incorporation of the PCT into India's patent system has significantly strengthened the nation's intellectual property framework, fostered innovation and drove economic growth. Continued reforms, along with strategic resource investments, will be crucial for India to maximize the PCT's benefits and overcome the ongoing challenges, ensuring the country remains competitive in the global innovation landscape.

Keywords: India's Patent Regime, Patents Act of 1970, Evolution, Patent Cooperation Treaty (PCT), Domestic Patent Framework, Unified Patent Filings, Administrative Hurdles, Global Innovation Landscape.

Introduction

A patent is a form of legal recognition that grants inventors exclusive rights over their creations. This system not only safeguards an inventor's interests but also serves society by making technical details of inventions publicly available, thereby fostering a culture of accelerated innovation.

Patents can be awarded for innovations across various technological domains, ranging from simple kitchen tools to advanced nanotechnology chips. An invention might be a tangible product, like a chemical compound, or a method, such as a technique for synthesizing a particular chemical. In reality, many products incorporate multiple inventions. For instance, a laptop computer integrates hundreds of distinct inventions, all functioning in unison. Additionally, patents can cover improvements to existing products or processes, ensuring continuous innovation and protection of intellectual property.

To be eligible for patent protection, an invention must meet several key criteria. It must fall within one of the statutory categories: process, machine, manufacture, or composition of matter. The invention must be novel, meaning it hasn't been previously disclosed or known to the public. Additionally, it must be non-obvious, representing a significant advancement over existing knowledge or technology. The invention should also be useful, providing some identifiable benefit and being operable. Finally, the inventor must fully disclose the invention in the patent application, detailing it sufficiently for someone skilled in the field to replicate it. Legal representatives can apply for patents on behalf of inventors in certain circumstances, such as if the inventor is deceased or incapacitated.

India's Patent Regime

India's current patent regime is governed by the Patents Act, 1970, which was last amended in 2005 to align with international standards, particularly the TRIPS Agreement (Trade- Related Aspects of Intellectual Property Rights). Some Aspects to that are:

- Eligibility Criteria- It is eligible for a patent if the invention is absolutely new for the world of science and it must be an inventive step (non-obviousness) for the people and does not fall under the exclusions of Sections 3 and 4 of the Patents Act, 1970.
- Term of Protection- These are granted for a maximum period of 20 years with annuity fees and could be renewed before 18 months of its expiry by paying the renewal fees.

If not renewed until then it will enter public domain.

- Examination Process- It is a procedure where all inventions are thoroughly reviewed & examined to ensure if it meets the eligibility criteria which is normally done by the controller General of Patents. It is examined within the duration of a month from the date of its publication. Its report is submitted within a month (not exceeding 3 months).
- Post- Grant Procedures- After the Examination, the patent is granted. The holder must pay maintenance fees and comply with post-grant review procedures. They can enforce the patent against infringers. The patent expires after 20 years.
- International Compliance- The regime aims to balance the interests of inventors & the public, promoting innovation while ensuring public access to new inventions.¹

Evolution

The Evolution of our Patent system is divided in three phases: Colonization, post-independence, & globalization.

IPR are governed by national law which must align with international standard set up by the World Trade Organisation (WTO), particularly the TRIPS Agreement. Article 7 of TRIPS expresses that IP protection should adopt technological innovation, promote technology transfer, & balance the rights & obligations of producers & users while maintaining social & economic welfare.

1. Colonial Era-

During British Colonial Period, India's patent system's foundation was led by Indian Patent and Designs Act, 1911, which also established the framework for patent administration under the controller of patents & designs. This colonial legacy laid the groundwork for India's patent regime.

2. Post- Independence-

After the period of Independence, it enacted its first independent patent law in 1970. It was specifically based on the recommendation of two committees: the *Bakshi Tekchand Committee* in 1949 & later, the *justice Rajagopal Ayyangar Committee*. They brought changes in a significant manner specifically on the respect of food & drugs patent, compulsory licensing, & working requirements. Due to this opportunity, India was

¹ <https://www.nextias.com/ca/current-affairs/10-06-2022/the-indian-patent-regime>

given the title of “Pharmacy of the World” for two decades as it provided drug exporting in a reasonable price for other countries.

3. **Globalization-**

In 1991, India complied with the General Agreement on Tariffs & Trade ((GATT 1947) Later succeeded by WTO) which resulted in formation of multiple amendments in TRIPS Agreement. Those amendments brought changes for product patents in food, medicines & agrochemicals. The agreements were used for stability & balance. However, India used the flexibilities in TRIPS to ensure that these changes did not disrupt existing Industries.²

India’s patent law underwent judicial scrutiny, particularly in the landmark *Novartis v . Union of India* case, where the Supreme Court of India upheld Section 3(d) of the Patents Act, curbing the "evergreening" of patents by denying protection for minor modifications to existing drugs. This ruling maintained a balance between protecting genuine innovations and ensuring access to affordable medicines.³

Patent Cooperation Treaty

PCT is an international treaty associated with more than 148 contracting states. This treaty streamlines the patent application process, which allows inventors to seek patent protection in multiple countries with single application. Even if the PCT application simplifies initial filing, the final decision remains with each national or regional patent office to grant a patent.

This treaty was designed to help inventors so that they could secure the patent rights in other countries simultaneously. The citizens of the particular country can file their patent application locally through their local patent office or directly with the International Bureau of WIPO in Geneva. A single PCT application holds an equal power or authority as filing PCT application in each country. Without this, every inventor has to go through a very troublesome work of filing every individual application for patent for each country which wastes their time, effort & cost in a significant manner. This treaty minimizes these burdens by consolidating the application procedure & allowing for uniform filing across different jurisdictions.

² <https://www.wipo.int/patent-judicial-guide/en/full-guide/india>

³ <https://blog.ipleaders.in/analysis-novartis-g-vs-union-india/>

Unified Patent Filing

The Unitary Patent is a new system that simplifies the process of obtaining patent protection across multiple European Union (EU) member states. Here's a detailed overview:

Key Features of the Unitary Patent:

1. **Single Application:** Inventors can file a single application with the European Patent Office (EPO) to seek patent protection in up to 25 EU member states. This excludes the need to file separate applications for every country.⁴
2. **Unified Effect:** Once granted, the patent will have a unitary effect, meaning it will be valid in all participating EU member states without the need for additional national validations.
3. **Cost-Effective:** The Unitary Patent reduces costs significantly by avoiding the need for multiple translations and national fees. This makes it more affordable for inventors and businesses to protect their inventions across Europe.
4. **High Standards:** The EPO maintains high standards of quality in the search and examination of patent applications, ensuring that patents granted under the Unitary Patent system meet rigorous criteria.
5. **Unified Patent Court (UPC):** The UPC is an international court established to handle disputes related to the infringement and validity of both Unitary Patents and traditional European patents. This provides a streamlined and consistent approach to patent litigation across the participating EU member states.

Benefits of the Unitary Patent:

1. **Simplification:** The Unitary Patent simplifies the patenting process by providing a single application and a unified effect across multiple countries.
2. **Cost Savings:** By reducing the need for multiple translations and national fees, the Unitary Patent lowers the overall cost of obtaining and maintaining patent protection.
3. **Efficiency:** The streamlined process and the establishment of the UPC enhance the efficiency of patent protection and dispute resolution in Europe.

⁴ https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/unified-patent-court-agreement-enters-force-2022-01-25_en?form=MG0AV3

How to Apply:

1. **Filing:** Inventors can file a Unitary Patent application through the EPO's Online Filing software. This system allows for the submission of EP, Euro-PCT, and PCT applications, as well as requests for unitary effect.
2. **Examination:** The EPO conducts a thorough search and examination of the application to ensure it meets the necessary criteria.
3. **Grant:** If the application is successful, the EPO grants the patent with unitary effect.
4. **Enforcement:** The UPC handles any disputes related to the infringement and validity of the Unitary Patent, providing a consistent legal framework across the participating EU member states.⁵

The Unitary Patent system represents a significant advancement in the European patent landscape, offering inventors a more efficient, cost-effective, and unified approach to protecting their innovations.

Administrative Hurdles

- **Eligibility and Novelty:** It ensures whether the invention is novel and non-obvious with the help of thorough research and documentation.
- **Technical and Legal Knowledge:** Applicants must have proper knowledge regarding both the technical & legal aspects of their invention which would cover the legal requirements for patentability.
- **Documentation and Formalities:** Proper documentation and adherence to formalities are crucial. Errors or omissions can lead to delays or rejections.
- **Patent Office Delays:** The patent office may experience backlogs, leading to long processing times.
- **Foreign Filing Complexities:** Filing patents in multiple countries involves navigating different legal systems and languages, which can be time-consuming and costly.
- **Examination and Rejections:** The examination process can be rigorous, and applications may face multiple rejections before a patent is granted.
- **Competitor Challenges:** Competitors could challenge the patent application, leading to additional legal hurdles.
- **Maintenance Fees:** Keeping a patent in force requires paying periodic maintenance fees, which can be a financial burden.

⁵ <https://www.epo.org/en/applying/european/unitary/unitary-patent>

- Enforcement: Even after obtaining a patent, enforcing it against infringers can be difficult and costly.⁶

Challenges in Patent Protection and Enforcement in India (Managing IP)

- Delay in Grant: The patent granting process in India can be lengthy, causing delays in obtaining patent protection.
- Complexity of Laws: The Indian patent system can be complex, making it difficult for applicants to navigate without legal assistance.
- Balancing Innovation and Competition: Ensuring that patents do not stifle competition while promoting innovation is a delicate balance.
- Patentability Criteria: Meeting the stringent criteria for patentability can be challenging, especially for incremental innovations.
- Patent Infringement and Enforcement: Enforcing patent rights in India can be challenging due to procedural complexities and the need for robust legal strategies.
- Judicial Delays: Legal proceedings related to patent disputes can be prolonged, affecting the timely resolution of cases.
- Foreign Filing License (FFL): Indian residents need to obtain an FFL to file patent applications abroad, adding an extra layer of administrative work.
- Public Health Considerations: The Indian patent system includes provisions for compulsory licensing in the interest of public health, which can impact patent holders.⁷

Comparison

Common Hurdles: Both sources highlight the complexities of the patent application process, the need for technical and legal knowledge, and the challenges of enforcement.

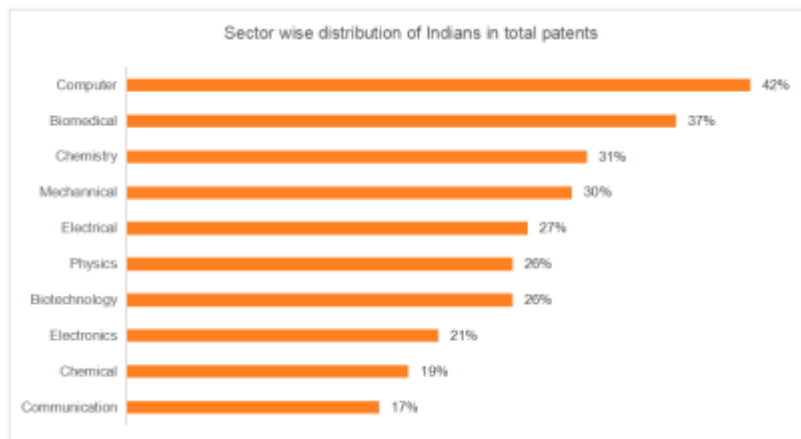
Specific to India: The Managing IP article emphasizes the unique challenges faced in India, such as delays in grant, complexity of laws, and public health considerations.

Global Perspective: The Milgrom & Daskam article provides a broader view of the hurdles faced by patent applicants globally, including foreign filing complexities and maintenance fees.

⁶ <https://www.milgromlaw.com/intellectual-property/hurdles-to-obtaining-patent-protection/>

⁷ <https://www.managingip.com/article/2a5bsc7vmakvojn4kh3i8/india-challenges-faced-in-the-protection-and-enforcement-of-patent-rights>

Global Innovation Landscape



The global innovation landscape is a vibrant, competitive arena where countries strive to outdo each other in technological advancement and creative solutions. The Global Innovation Index (GII) consistently places Northern America and Europe at the forefront, thanks to their strong policies, substantial investments in research and development (R&D), and collaborative ecosystems that foster startups and industry partnerships. Meanwhile, regions like South East Asia, East Asia, and Oceania have made remarkable strides, reflecting the increasing geographical diversity in global innovation.

India's significant rise in the GII rankings is a testament to its burgeoning innovation ecosystem. Driven by government initiatives, a burgeoning entrepreneurial spirit, and a focus on fostering technological growth, India is quickly becoming a major player in the global innovation landscape. This trend underscores the broader movement of emerging economies stepping up their innovation game, contributing to a more interconnected and diverse global landscape.

The result is a dynamic, evolving environment where new ideas and technologies thrive, propelled by both traditional innovation powerhouses and rising stars in the global market. This continuous shift not only fuels competition but also drives collaboration, leading to groundbreaking advancements that benefit the global community.

Correlation Of India's Patent System & PCT

The correlation between India's patent system and the Patent Cooperation Treaty (PCT) lies in how the PCT integrates with and enhances India's ability to protect inventions internationally.

- Unified Procedure

The PCT enables inventors to file a single international patent application rather than multiple national applications. In India, this means that an applicant can file a PCT application through the Indian Patent Office, which then acts as the receiving office. This single application is equivalent to filing in each of the PCT member countries.

- Efficiency and Cost-Effectiveness

By using the PCT route, Indian inventors save significant time, effort, and expense. The PCT streamlines the initial stages of the patent process, allowing for a unified examination before entering national phases in individual countries. This reduces duplication of work and the complexities involved in managing multiple applications.

- Legal Effect

A PCT application filed in India has the same legal standing as if separate applications were filed in each of the 148 PCT member states. This means that an Indian applicant can pursue patent protection globally without the need to understand and comply with different national laws initially.

- Examination and Flexibility

The PCT process includes an international search and preliminary examination report, providing the applicant with valuable insights into the patentability of their invention before deciding to proceed with national applications. This helps Indian applicants make informed decisions about where to pursue patent protection, ensuring resources are wisely allocated.

- Compliance and Harmonization

India's alignment with the PCT demonstrates its commitment to international patent standards set by the World Intellectual Property Organization (WIPO). This ensures that India's patent laws are harmonized with global practices, fostering a more predictable and reliable patent system for both domestic and international stakeholders.

- Strategic Advantages

For Indian inventors, the PCT provides a strategic advantage by extending the time (up to 30 months from the priority date) to enter national phases. This extra time can be

used to assess the commercial viability of the invention in different markets and secure funding or partnerships.

In summary, the PCT complements India's patent system by providing a streamlined, efficient process for obtaining international patent protection, aligning with global standards, and offering strategic benefits to inventors.⁸

Findings

The research paper titled "Patent System in India in the Light of the Patent Cooperation Treaty" explores how India's patent regime, governed by the Patents Act of 1970, has evolved since India joined the Patent Cooperation Treaty (PCT) in 1998. The PCT has streamlined the process for Indian inventors by enabling a unified application for patent protection in multiple countries, reducing administrative hurdles, time, and costs. This has led to increased foreign patent filings in India and provided Indian inventors a strategic advantage in pursuing international patents. However, challenges remain, including delays in patent processing due to backlogs in the Indian Patent Office, and the need for better resource allocation to handle the growing volume of applications. The integration of the PCT has strengthened India's intellectual property framework, promoted innovation and facilitated access to global markets, but continued reforms are necessary to address inefficiencies and maintain competitiveness in the global innovation landscape.

⁸ <https://www.wipo.int/patent-judicial-guide/en/full-guide/india>