



Intellectual Property Rights-I

KSLU LL.B. — Complete Exam-Ready Study Bundle (All Five Units)

KSLU LL.B. Study Bundle

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Read this first page, then go to your unit. This single file holds the whole subject: how to use the notes, the rules that win marks, and a priority index of what repeats. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real KSLU question papers (both the 80-mark and the 100-mark patterns).

How to Use These Notes

What this is. A complete, exam-focused bundle covering all five units of KSLU Intellectual Property Rights-I. Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend your revision time.

Who it is for. The first-time learner (understand before memorising), the revision student (fast, high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

What is inside every topic — the same blocks, in the same order:

Block	Its job	The mark it earns
Previous Year Questions	Real questions + years asked	What to prepare and how often it repeats
The Hook	A true story / landmark-case opener	Memorable; a strong opening line
Statutory / Jurist Quotes	Exact definitions and section text	Examiners reward precise authority
In Simple Terms	Plain-English translation	Ensures you <i>understand</i>
The Visual (chart)	Maps the topic structure	Recall and structure at a glance
Case Laws	Landmark judgments + ratio	Case names with years are pure marks

Each unit closes with a **Quick Revision & Case Law Table** for the final hour.

These notes **teach** the subject. The **Question Bank** is the companion volume that turns that knowledge into marks — it carries a model answer for every past question, each opening with a 📖 **Answer Outline** and, where two questions are easily confused, a ⚠️ **Don't Confuse** box.

The 4-step study plan. (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the matching answers in the Question Bank.

The 10 Rules That Win Marks

1. **Lead with a definition + roadmap** — open every essay with the statutory definition and the section number.
2. **Name the exact excluding clause** — in a patent problem, cite the precise sub-clause of s.3 (e.g. s.3(i) for a method of treatment), never “s.3 generally”.
3. **Name the case AND the year** every time — *Novartis (2013)*, *Cadila Health Care (2001)*, *Satyam Infoway (2004)*.
4. **Quote the exact section / jurist** where one is given — s.2(1)(zb) for a trade mark, s. 2(1)(e) for a GI.
5. **Translate every Latin maxim in [brackets]** — *quid pro quo* [something for something].
6. **Use the four IRAC headings** for problems (Issue, Rule, Application, Conclusion); spot the planted decoy fact.
7. **Always give a definite verdict** — “the mark is deceptively similar and will be refused”, not “it may or may not be”.
8. **Use the chart's structure** to organise the body of a long answer.
9. **Close with a short, confident conclusion** that ties back to the section.
10. **Manage time** so no high-mark question is left unwritten.

Disclaimer. A study aid, not a substitute for the bare Acts and prescribed texts. Cross-check every section number against the official text at indiacode.nic.in. © Medha-Academy.in · KSLU LL.B. · For personal academic use.

Priority Index — what actually repeats

Work top-down. The **Must-know** list is asked almost every sitting; the **High** list is asked most years; the **If time** list rewards the student who has covered everything else.

Must-know (★★★) — cover first, cover fully.

- **U1** Meaning, nature and kinds of Intellectual Property; Patentable and non-patentable inventions (s.3); Procedure to obtain a patent; Provisional and complete specification (s.9); Rights and obligations of the patentee (s.48).
- **U2** Meaning, functions and kinds of a trade mark; Registration and its effects; Absolute and relative grounds of refusal (ss.9, 11); Deceptively similar marks (s.2(1)(h)); Infringement — remedies and defences (ss.29, 30, 135); Passing off and its difference from infringement.
- **U3** IT Act 2000 — salient features, objectives, jurisdiction; Cyber crimes — meaning and classification; Domain-name disputes; E-commerce and e-contract.
- **U4** Salient features and objects of the GI Act 1999; Registration of a GI; Rights of the registered proprietor / authorised user and devolution.
- **U5** Paris Convention; Patent Cooperation Treaty (PCT); Madrid Protocol; WIPO.

High (★★) — asked most years.

- **U1** Growth and justification of IPR; Meaning and object of a patent; Assignment and licensing; Revocation and surrender; Infringement of patents and remedies; Patent agent.
- **U2** Salient features of the Trade Marks Act 1999; Certification, collective and well-known marks.
- **U3** Cyber IP and IP in cyberspace; Software patent and copyright; Digital signature and certifying authority.
- **U4** Meaning and attributes of a GI; Infringement of a GI; GI versus trade mark; Important Indian GIs (Basmati case).

If time (★) — round out full coverage.

- **U1** Concept of property; Scope of the Patents Act 1970 (2005 amendment); Compulsory licences; Government use; Opposition proceedings.
- **U2** Assignment and transmission of marks; Trade libel.
- **U3** Data protection; Controller of Certifying Authorities; Cyber Appellate Tribunal; ISP and internet policy.
- **U4** Offences and penalties; Registrar of GIs; GI under TRIPS.

Turn to your unit and begin. Good luck.

UNIT 1 — Introductory Aspects of Intellectual Property & Patents

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In this unit.

This unit opens the whole subject and then dives into the first great IP right — the patent. The opening idea is simple: intellectual property is property in creations of the *mind* — inventions, brands, artistic works, designs — and because you cannot fence off an idea the way you fence off land, the law gives the creator a time-limited monopoly instead. The rest of the unit works out that bargain for inventions under the Patents Act, 1970: what can be patented, who may apply, how a patent is obtained, what rights it gives, and how those rights are limited and enforced. Two questions carry most of the marks — “explain the kinds of IP” and the patent-problem family built on s.3 (patentable vs non-patentable) — so master those and the unit is largely won.

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1. Concept of property; industrial and non-industrial property

Previous Year Questions

- **[16M]** Explain the concept of property. Distinguish between industrial and non-industrial property. (2021, 2024) ★

The Hook

When John Locke wrote in 1689 that “every man has a property in his own person... the labour of his body and the work of his hands are properly his”, he was talking about land and cattle. Three centuries later that same sentence is used to justify a patent on a gene and a trade mark on a soft drink. Property, it turns out, is not the *thing* — it is the bundle of rights the law recognises over it.

What “property” really means

Start with the everyday picture: property is a thing you own — a house, a car, a watch. The law’s picture is slightly different and more useful. Property is not the object itself but a **bundle of rights** the law gives a person over a resource: the right to *use* it, to *enjoy its fruits*, to *exclude* others, and to *transfer* it. Own a house and you may live in it, rent it out, keep trespassers off, and sell it. Those four rights *are* the ownership.

Property splits first into **tangible** (movable and immovable things you can touch — land, goods) and **intangible** (rights that have value but no physical body — a debt, shares, and intellectual property). Intellectual property is the leading example of intangible property: what you own is the invention or the brand, not any physical copy of it.

A second, exam-favourite division is **industrial property** versus **non-industrial (literary/artistic) property**. This split comes straight from the Paris Convention, 1883.

- **Industrial property** covers creations used in *trade and industry*: patents (inventions), trade marks and service marks, industrial designs, geographical indications, and protection against unfair competition. Its home statute-family is the Patents Act, Trade Marks Act, Designs Act and GI Act.

- **Non-industrial property** — usually called literary and artistic property — is **copyright**: books, music, films, paintings, software. It protects *expression*, not commerce-linked signs, and is governed by the Copyright Act, 1957.

The line is not watertight (software and industrial designs sit near the border), but for the exam the crisp point is: industrial property is commercial and mostly *registered*; copyright is artistic and arises *automatically* on creation.

John Locke, Two Treatises of Government (1689): “Every man has a property in his own person... The labour of his body and the work of his hands, we may say, are properly his.”

In Simple Terms: You own what you make. Because an invention or a brand is the “work of the hands” of the mind, the law treats it as property — a bundle of rights to use it, profit from it, keep others out, and sell it.

◆ WORKED EXAMPLE — sorting a portfolio

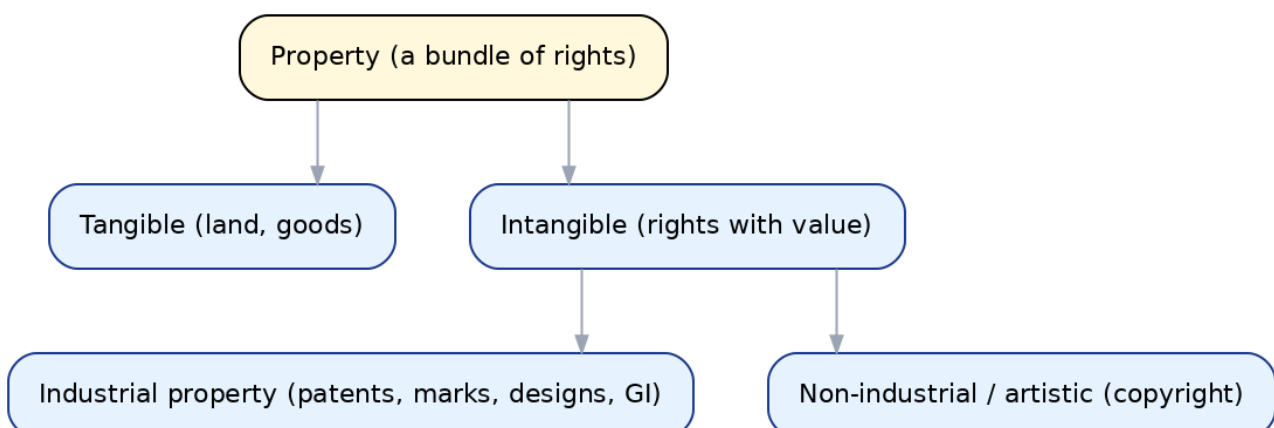
Facts. A company owns: (a) a factory building, (b) a patent on a machine, (c) the “Amul” trade mark, (d) the copyright in its advertising jingle.

Rule. Property = tangible/intangible; intangible IP splits into industrial (patent, mark) and non-industrial/artistic (copyright).

Apply. (a) is tangible immovable property. (b) and (c) are intangible *industrial* property. (d) is intangible *non-industrial* (artistic) property.

Conclusion. Three of the four assets are intellectual property; only the jingle sits in the copyright/artistic box, the other two in the industrial box.

The Visual



Case Laws

- **Diamond v Chakrabarty (1980)** — even a living, genetically-engineered micro-organism can be “property” capable of a patent; property expands to fit new creations.

- **R.C. Cooper v Union of India (1970)** — the Supreme Court described property as a bundle of rights, the widest concept in the Constitution’s Article 19(1)(f)/31 scheme.

2. Meaning, nature and different forms/kinds of Intellectual Property

Previous Year Questions

- **[16M]** Define Intellectual Property. Explain its different forms / kinds / types. (2018, 2019, 2022, 2023, 2024, 2025, 2026) ★★ ★
- **[8M]** Short note on the kinds of Intellectual Property. (2019, 2021, 2025) ★★ ★
- **[Problem]** ‘A’ invents something and dies before filing; ‘C’, his lab assistant who knew of it, obtains the patent. Advise. (2024)

The Hook

In 1994 the Government of India signed the TRIPS Agreement at Marrakesh, promising to protect seven kinds of “intellectual property” by law. Overnight, ideas — a molecule, a logo, a song, the name “Darjeeling” — became assets a country could be sued over. This single question, “what are the kinds of IP”, is the most-asked opener in the whole subject: it has appeared in almost every KSLU sitting.

What is Intellectual Property?

Intellectual property (IP) is **property in creations of the human mind** — inventions, brand names, artistic works, designs and origin-linked names. The everyday hook: ordinary property is something you can *touch and fence*; IP is something you can only *think and copy*. Because you cannot physically fence an idea, the law fences it for you by giving the creator an exclusive right for a limited time.

Its **nature** has four defining features, and examiners look for each:

- **Intangible / incorporeal** — what is owned is the idea, sign or expression, not the physical object carrying it. You may own a book (a thing) yet not own the copyright in it.
- **Territorial** — an Indian patent protects only in India; protection stops at the border unless an international convention extends it (Unit V).
- **Time-limited** — unlike land, IP rights expire (a patent lasts 20 years, copyright life-plus-60), after which the creation falls into the *public domain* [free for all to use].
- **A creature of statute** — each right is defined and granted by its own Act, not by general common law.

The forms / kinds of IP

There are **five core kinds** you must be able to list, define in one line, and give an example of. (TRIPS also protects trade secrets and layout-designs, worth a mention.)

- **Patent** — protects a new, useful, non-obvious **invention** (a product or process). Governed by the **Patents Act, 1970**. Term: 20 years. Example: a new drug molecule.
- **Trade mark** — protects a **sign that identifies the source** of goods/services (word, logo, shape). Governed by the **Trade Marks Act, 1999**. Term: 10 years, renewable forever. Example: the “Nike” swoosh.
- **Copyright** — protects the **original expression** of literary, dramatic, musical and artistic works, films and software. Governed by the **Copyright Act, 1957**. Term: life of author + 60 years. Example: a novel or a song. It arises *automatically*, no registration needed.
- **Industrial design** — protects the **shape, configuration, pattern or ornament** applied to an article (its *look*, not its function). Governed by the **Designs Act, 2000**. Term: 10 + 5 years. Example: the shape of a Coca-Cola bottle.
- **Geographical indication (GI)** — protects a **name that links a good to a place** whose qualities/reputation come from that origin. Governed by the **GI Act, 1999**. Term: 10 years, renewable. Example: “Darjeeling” tea. Owned by a *community*, not one trader.

Two more, worth a line each: **trade secrets / confidential information** (protected by contract and equity, no registration, e.g. the Coca-Cola formula), and **plant varieties and layout-designs of integrated circuits** (their own special Acts).

World Intellectual Property Organization (WIPO) — Convention, 1967, Art. 2(viii): *“‘intellectual property’ shall include the rights relating to literary, artistic and scientific works; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”*

In Simple Terms: IP is any right that comes from using your brain — inventing, branding, writing, designing. WIPO’s list just names the boxes: inventions go in the patent box, brands in the trade mark box, creative works in the copyright box, and so on.

◆ WORKED EXAMPLE — one product, four rights

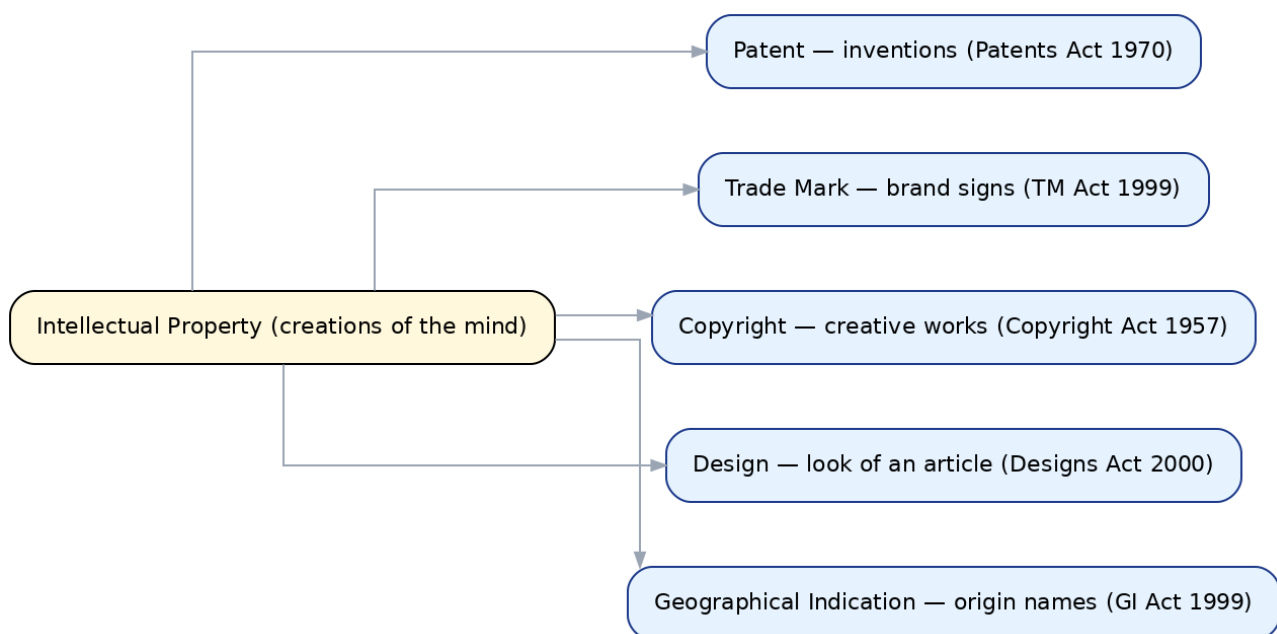
Facts. A company launches a new smartphone with a novel battery, a distinctive name and logo, a unique curved body, and pre-loaded music.

Rule. Each kind of IP protects a different aspect of the same product.

Apply. The novel battery → **patent**. The name and logo → **trade mark**. The curved body/look → **industrial design**. The pre-loaded music and the phone's software → **copyright**.

Conclusion. A single commercial product can carry four distinct IP rights at once, each under its own Act — showing why you must classify by *what* is protected, not by the product.

The Visual



► KEY POINT

The reliable full-marks structure for this question: (1) define IP, (2) state the four nature-features (intangible, territorial, time-limited, statutory), (3) list the five kinds with one line of “what it protects + which Act” each.

Case Laws

- **R.G. Anand v Delux Films (1978)** — copyright protects the *expression* of an idea, not the idea itself; a foundational line on what IP does and does not cover.
- **Novartis AG v Union of India (2013)** — the Supreme Court explained that IP monopolies are bargains granted in the public interest, not absolute private rights.

3. Historical background, growth and justification of IPR

Previous Year Questions

- **[16M]** Trace the historical growth of IPR. Discuss the economic and labour justifications for protecting intellectual property. (2020, 2021, 2022, 2025, 2026) ★★
- **[8M]** Short note on the justification / human creativity behind IPR. (2019) ★★

The Hook

In 1474 the Republic of Venice passed the world's first patent statute, promising ten years' protection to "any new and ingenious device". The idea was startling: give an inventor a temporary monopoly so that *more* inventions get made and shared. Five centuries later that same trade-off — a limited monopoly in exchange for public disclosure — runs through every IP law on earth.

How IPR grew

The story moves in clear stages, and an examiner rewards the chronology:

- **Guild and privilege era (medieval-1600s).** Monopolies were royal favours. Venice (1474) turned this into a *statute*; England's **Statute of Monopolies, 1624** abolished arbitrary royal monopolies but preserved patents for "new manufactures" — the ancestor of modern patent law.
- **Statutory era (1700s-1800s).** England's **Statute of Anne, 1710** created the first copyright. The Industrial Revolution made inventions economically central, so patent systems spread through Europe and America.
- **Internationalisation (late 1800s).** Because rights stopped at borders, nations cooperated: the **Paris Convention, 1883** (industrial property) and the **Berne Convention, 1886** (copyright).
- **The TRIPS era (1994-).** The **TRIPS Agreement, 1994** (under the WTO) made minimum IP standards a condition of world trade, forcing India to overhaul its laws — the 2005 patent amendment is a direct result.

In India, patents date from the **Act of 1856**, refined into the **Patents Act, 1970**, and modernised by the **2005 amendment** to meet TRIPS.

Why protect IP at all? The justifications

This is the heart of the essay. There are four classic justifications:

- **Natural-rights / labour theory (Locke).** A person owns the fruit of their labour. Mix your mental labour with the world — invent, write — and the result is *yours* by natural right. The everyday version: “you reap what you sow.”
- **Reward / incentive theory.** Society *rewards* creators for their contribution, and the promise of reward *incentivises* others to create. Without protection, a rival copies the product at zero research cost and undercuts the inventor — so no one would bother inventing.
- **Economic / utilitarian theory.** IP corrects a market failure. Knowledge is a “public good” — easy to copy, hard to charge for. A temporary monopoly lets the creator recoup the (often huge) cost of research, which is *economically efficient* for society over the long run.
- **Disclosure / public-benefit theory.** In exchange for protection the creator must *publish* the invention. Society gets the knowledge immediately and free use after the term expires — the whole point of the patent bargain.

Human creativity is the thread through all four: IP law assumes that people create more when creativity is rewarded, and that a knowledge economy runs on protected ideas.

Abraham Lincoln (1859): “The patent system added the fuel of interest to the fire of genius.”

In Simple Terms: Left unprotected, ideas are copied for free and creators earn nothing, so fewer ideas get made. IP law adds a money incentive to talent — protect the creation for a while, and more people will create.

◆ WORKED EXAMPLE — why the incentive matters

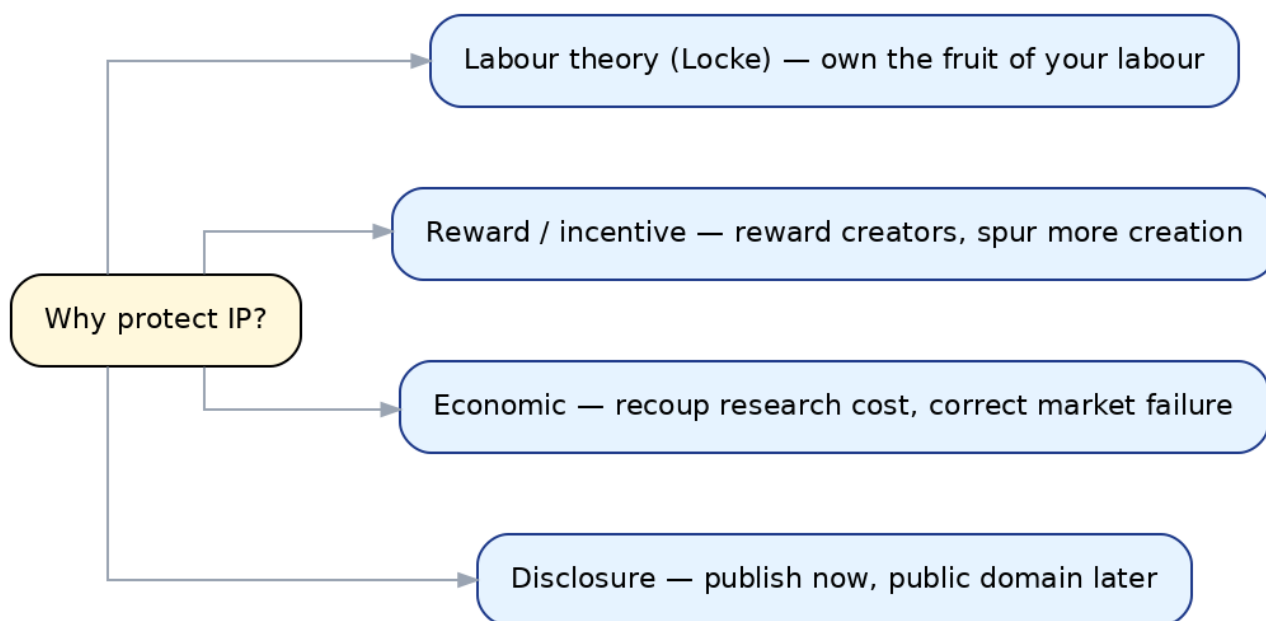
Facts. A firm spends ₹500 crore over ten years to develop a new medicine. A rival can copy the finished pill for ₹5.

Rule. Reward/incentive + economic theory: without a monopoly to recoup research cost, no one invests in research.

Apply. If the rival may copy freely, it sells cheaper, the innovator never recovers ₹500 crore, and future firms stop researching. A 20-year patent lets the innovator price to recoup costs, then the drug goes generic.

Conclusion. The temporary monopoly is not a gift to the rich — it is the mechanism that makes expensive innovation happen at all.

The Visual



Case Laws

- **Diamond v Chakrabarty (1980)** — patents encourage investment in research; “anything under the sun made by man” may qualify, reflecting the incentive rationale.
- **Novartis AG v Union of India (2013)** — the incentive must be balanced against public access to medicine; the justification is instrumental, not absolute.

4. Meaning, definition and object of patent; principles underlying patent law

Previous Year Questions

- **[16M]** Define patent. Explain its object and the principles underlying patent law. (2018, 2021, 2022, 2023, 2024) ★★

The Hook

The word “patent” comes from *litterae patentes* [open letters] — sealed documents the Crown issued *open* for all to read, granting a right. That is still exactly what a patent is: a public document announcing that this invention now belongs, for a while, to this inventor.

What is a patent?

A patent is a **limited monopoly the State grants to an inventor**: in exchange for *publicly disclosing* a new, useful and non-obvious invention, the inventor gets the

exclusive right to make, use and sell it for a fixed term — **20 years** in India (s.53). Everything about patent law flows from that one bargain.

The key idea is the **quid pro quo** [something for something]: society gives the inventor a monopoly; the inventor gives society the knowledge (by publishing the invention) and, after 20 years, free use of it. A patent is *not* a reward for keeping a secret — it is a reward for *disclosure*.

The three essentials of a patentable invention (the tests you apply to every problem):

- **Novelty** — the invention must be *new*: not already known or published anywhere in the world before the priority date (s.2(1)(l), “new invention”).
- **Inventive step** — it must be *non-obvious* to a person skilled in the art; a technical advance or economic significance (s.2(1)(ja)).
- **Industrial application / utility** — it must be *capable of being made or used* in an industry (s.2(1)(ac)).

The object of patent law is threefold: (1) to *encourage invention* by rewarding inventors; (2) to *secure disclosure* so knowledge enters the public store; and (3) to *balance* the private monopoly against the public interest in access and competition.

Principles underlying patent law:

- **First-to-file / true-and-first-inventor** — the right goes to the one who invents and files first (s.6).
- **Monopoly for limited term** — never perpetual; 20 years then public domain.
- **Disclosure in return for protection** — full description and claims (s.10).
- **Public interest override** — compulsory licensing, government use and s.3 exclusions keep the monopoly in check.
- **Territoriality** — an Indian patent binds only within India.

Patents Act, 1970, s.2(1)(m): “‘patent’ means a patent for any invention granted under this Act.”

Patents Act, 1970, s.2(1)(j): “‘invention’ means a new product or process involving an inventive step and capable of industrial application.”

In Simple Terms: A patent is a 20-year “keep-off” right over a genuinely new and useful invention, given only because the inventor agrees to tell the world how it works. New + inventive + useful = patentable.

◆ WORKED EXAMPLE — is there a “bargain”?

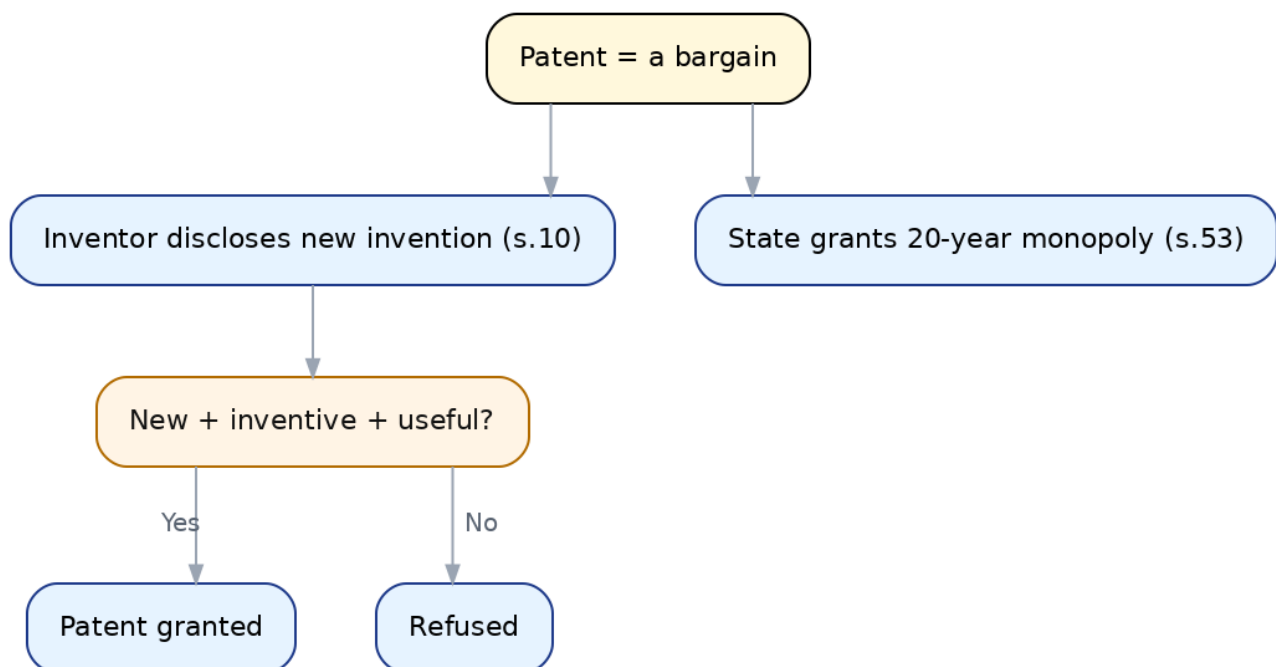
Facts. An inventor wants a patent but refuses to reveal how the machine works, keeping the mechanism secret.

Rule. A patent is granted only in exchange for full disclosure (s.10 complete specification); the object is disclosure, not secrecy.

Apply. Without disclosure there is nothing for the public to receive after the term — the *quid pro quo* fails. The proper route for a secret is trade-secret protection, not a patent.

Conclusion. No disclosure, no patent. Secrecy and patenting are opposite strategies.

The Visual



Case Laws

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — the object of a patent is to encourage scientific research and industrial progress; a patent is not granted for an obvious workshop improvement.
- ***Novartis AG v Union of India (2013)*** — patent law balances the inventor’s monopoly against the public interest; the bargain must be genuine.

5. Scope and salient features of the Patents Act, 1970 (with 2005 amendment)

Previous Year Questions

- **[16M]** Explain the scope and salient features of the Patents Act, 1970 with special reference to the 2005 amendment. (2024) ★

The Hook

Until 1 January 2005, India granted no patents on medicines or food — only on the *process* of making them. That single limitation kept Indian generic drugs among the cheapest on earth. TRIPS forced the change, and the 2005 amendment quietly rewrote the pharmaceutical world.

The scope and features

The **Patents Act, 1970** replaced the colonial 1911 Act and is the complete code for patents in India. It was amended in 1999, 2002 and — most importantly — **2005**, to comply with TRIPS. Its salient features:

- **Definition-driven** — “invention” (s.2(1)(j)) requires novelty, inventive step and industrial application.
- **List of non-inventions** — ss.3 and 4 exclude a long list from patentability (see Topic 6).
- **20-year uniform term** — s.53, counted from the filing date, for all patents.
- **Complete disclosure** — the complete specification with claims (s.10) is the price of the monopoly.
- **Opposition mechanism** — pre-grant and post-grant opposition (s.25).
- **Compulsory licensing and government use** — public-interest safety valves (ss.84, 92, 99–103).
- **Patent Office and Controller** — administers grant, maintains the Register (s.67).

The 2005 amendment — the headline points:

- **Product patents introduced.** Before 2005, s.5 allowed *only process patents* for food, medicine and chemicals. The 2005 amendment **deleted s.5**, so now the *product itself* — a new molecule — can be patented, not just the method of making it.
- **s.3(d) inserted/strengthened** to block “evergreening”: a new form of a known substance is patentable only if it shows enhanced *therapeutic efficacy* — the rule later applied in *Novartis (2013)*.
- **Post-grant opposition** and provisions for pre-grant opposition refined (s.25).

- **Compulsory-licence machinery** aligned with TRIPS flexibilities (later used in *Natco v Bayer* (2012)).

Patents Act, 1970, s.53(1): “the term of every patent granted... shall be twenty years from the date of filing of the application for the patent.”

In Simple Terms: The 1970 Act is India’s patent rulebook. The 2005 amendment’s big move was to allow patents on *products* (like a drug molecule itself), not just on the process of making them — while adding s.3(d) to stop trivial “new forms” from grabbing fresh monopolies.

◆ WORKED EXAMPLE — before and after 2005

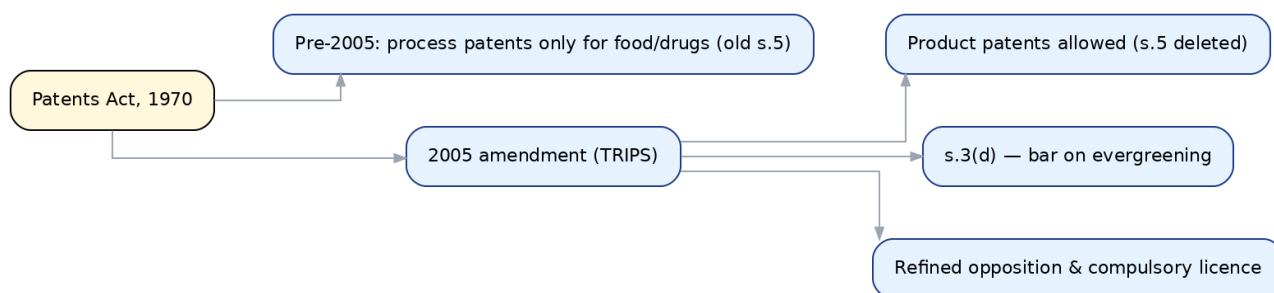
Facts. In 2003, a company invents a new medicine molecule and a new method to synthesise it.

Rule. Pre-2005 s.5 allowed only process patents for medicines; post-2005 both product and process are patentable.

Apply. In 2003 the company could patent only the *method*; a rival using a different method could sell the same molecule. After 2005 the company could patent the *molecule itself*, blocking all rivals however they make it.

Conclusion. The 2005 shift from process-only to product patents is the single most important feature to name in this answer.

The Visual



Case Laws

- **Novartis AG v Union of India (2013)** — applied the post-2005 s.3(d); a new salt form of a known drug without enhanced efficacy is not patentable.
- **Natco Pharma v Bayer Corporation (2012)** — first compulsory licence under the post-2005 regime, showing the Act’s public-interest features in action.

6. Patentable and non-patentable inventions

Previous Year Questions

- **[16M]** What inventions are patentable and what are not patentable under the Patents Act, 1970? (2019, 2020, 2022, 2026) ★★★
- **[8M]** Short note on non-patentable inventions (s.3). (2023, 2024, 2026) ★★★
- **[Problem]** Atomic-energy invention / method of surgery / antivirus software / fly-ash brick machine / pebble-levitation machine — is it patentable? (2018–2026, many sittings)

The Hook

In 2001 a US company, RiceTec, tried to patent “Basmati”. Around the same time, Indian courts were refusing patents on methods of surgery, antivirus software and a machine that claimed to defy gravity. The common thread: an invention can be brilliant and still be barred — because s.3 says so. This is the biggest problem-question topic in the paper.

The two-step test

To be patentable, an invention must (A) satisfy the **positive tests** of s.2(1)(j), and (B) *not* fall in the **negative list** of ss.3 and 4.

A. The positive tests (what makes an invention patentable)

An “invention” under s.2(1)(j) is a new product or process that has all three:

- **Novelty** — new, not anticipated by prior publication or use anywhere in the world before the priority date.
- **Inventive step (non-obviousness)** — a feature involving technical advance or economic significance that is not obvious to a person skilled in the art (s.2(1)(ja)).
- **Industrial applicability / utility** — capable of being made or used in an industry (s.2(1)(ac)).

Miss any one and there is no invention to patent.

B. The negative list — non-patentable inventions (s.3)

Even a novel, useful, non-obvious idea is barred if it is one of these (learn the clause letters — problems turn on them):

- **s.3(a)** — frivolous inventions, or those contrary to well-established natural laws (e.g. a perpetual-motion or anti-gravity machine).
- **s.3(b)** — inventions contrary to public order, morality, or causing serious prejudice to human, animal, plant life or the environment.

- **s.3(c)** — a mere discovery of a scientific principle, an abstract theory, or discovery of any living thing or non-living substance occurring in nature.
- **s.3(d)** — a mere new *form* of a known substance without enhancement of known efficacy; mere new use of a known substance (the anti-evergreening clause — *Novartis*).
- **s.3(e)** — a substance obtained by mere admixture (only aggregating known properties).
- **s.3(f)** — mere arrangement or re-arrangement of known devices each working independently.
- **s.3(h)** — a method of agriculture or horticulture.
- **s.3(i)** — any **method of medicinal, surgical, curative or other treatment** of human beings or animals. *This is the clause for the surgery / epilepsy-cure / limb-surgery problems.*
- **s.3(j)** — plants and animals (other than micro-organisms) and essentially biological processes.
- **s.3(k)** — a mathematical or business method, a **computer programme per se**, or algorithms. *This is the clause for the antivirus-software problem.*
- **s.3(m)** — a mere scheme, rule or method of performing a mental act or playing a game.
- **s.3(n)** — a mere presentation of information.
- **s.3(p)** — traditional knowledge, or aggregation of known properties of traditionally known components.

C. Atomic energy — s.4

Inventions relating to **atomic energy** are not patentable at all (s.4, read with s.20(1) of the Atomic Energy Act, 1962). *This is the clause for the atomic-energy problem — the answer is a flat “not patentable”.*

Patents Act, 1970, s.3(i): “any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products” — *is not an invention.*

Patents Act, 1970, s.3(k): “a mathematical or business method or a computer programme per se or algorithms” — *is not an invention.*

In Simple Terms: First check the invention is new, non-obvious and useful. Then run it past the s.3 blacklist and s.4. Many clever inventions — a cure, a surgery method, software as such, an atomic-energy device — are refused not because they are bad but because the law has fenced them off.

◆ WORKED EXAMPLE — the method-of-treatment trap

Facts. A neurologist invents a method of curing epilepsy by delivering mild electric shocks to the brain, and seeks a patent for the *method*.

Rule. s.3(i) — a method of medicinal/curative treatment of human beings is not an invention.

Apply. The claim is to a *method of treatment*, squarely within s.3(i). It is refused however novel it is. (A new *device* to deliver the shocks could be patentable — the bar is on the *method*, not the apparatus.)

Decoy. Do not be distracted by how brilliant or novel the cure is; novelty cannot rescue a s.3(i) subject-matter.

Conclusion. The method is not patentable under s.3(i).

◆ WORKED EXAMPLE — the software problem

Facts. ‘Z’ invents an antivirus software (“Quick Heal”) and applies for a patent.

Rule. s.3(k) — a “computer programme per se” is not patentable; software is protected by *copyright* (as a literary work) instead.

Apply. The claim is to a computer programme as such, barred by s.3(k). Unless the software produces a *technical effect* embedded in novel hardware, it is not patentable. The correct protection is copyright under the Copyright Act, 1957.

Conclusion. No patent under s.3(k); advise the client to seek copyright registration.

✍ EXAM TIP — always name the exact clause.

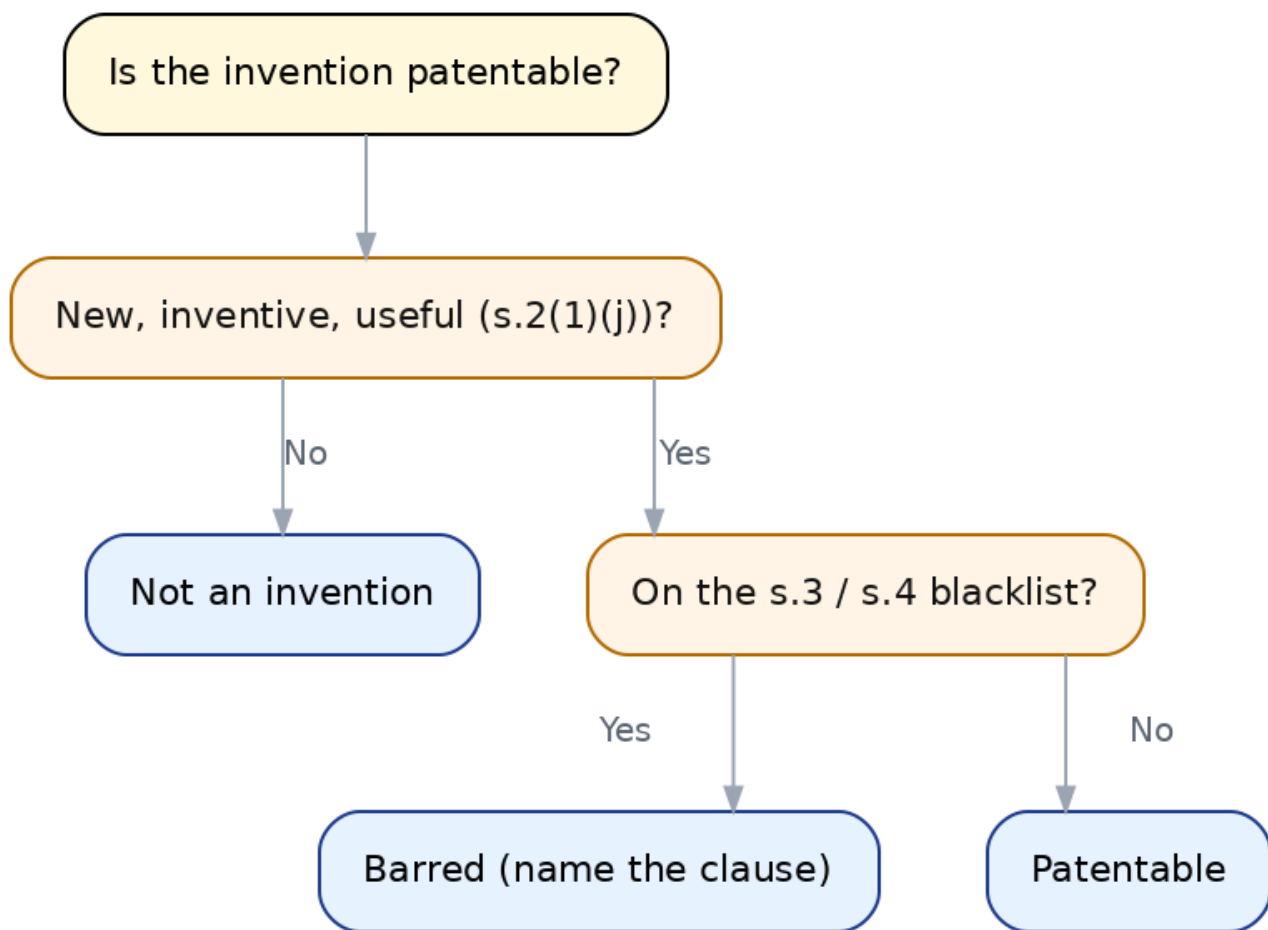
✍ EXAM TIP — cite the sub-clause, not just “s.3”

The trap. Candidates write “this is not patentable under s.3” and stop, losing half the marks — the examiner is testing whether you can pin the *precise* clause.

What to write. State the exact letter and paraphrase it: “The method of treatment is barred by **s.3(i)**”; “the antivirus is a computer programme per se, barred by **s.3(k)**”; “atomic energy is barred by **s.4** read with the Atomic Energy Act, 1962.”

Why it scores. The whole s.3 family is a menu of decoys; naming the right item proves you can classify, which is the skill being examined.

The Visual



Case Laws

- **Novartis AG v Union of India (2013)** — s.3(d): a new crystalline form of imatinib (Glivec) without enhanced therapeutic efficacy is not patentable.
- **Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)** — a mere workshop improvement obvious to a skilled worker lacks inventive step.
- **Diamond v Chakrabarty (1980)** — a genetically engineered micro-organism *is* patentable (compare s.3(j), which excludes plants and animals but not micro-organisms).

7. Procedure to obtain a patent — application, acceptance, grant; who may apply

Previous Year Questions

- **[16M]** Explain the procedure for obtaining a patent under the Patents Act, 1970. Who may apply? (2018, 2020, 2021, 2022, 2023, 2024, 2025) ★★★
- **[Problem]** Employer patents an employee's invention / student uses a teacher's principle to invent / professor invents using university facilities — who owns the patent? (2019, 2021, 2023, 2025)

The Hook

When Mahesh, a university professor, invented something in his spare time using university equipment, the university claimed the patent. Who owns it? The answer lies in the first question every patent procedure asks: *who is the true and first inventor?*

Who may apply — s.6

An application may be made by (any of, alone or jointly):

- the **true and first inventor** of the invention;
- an **assignee** of the true and first inventor (e.g. an employer to whom the inventor has assigned rights); or
- the **legal representative** of a deceased person who was entitled to apply.

The **“true and first inventor”** (s.2(1)(y)) is the person who *actually devised* the invention — not the first importer, and not someone who merely learned of it from another. This rule decides the ownership problems: a lab assistant who only *knew of* the invention is not the true and first inventor; a student who *applies* a principle taught by a teacher to make a *new working invention* is the true and first inventor of that invention.

The procedure — the step chain

- **Filing the application (s.7).** File with the Patent Office, with either a provisional or complete specification (s.9). The **priority date** is fixed by the filing date.
- **Specification (ss.9, 10).** A provisional secures the priority date; a complete specification (with full description and **claims**) must follow within 12 months.
- **Publication (s.11A).** The application is published in the Official Journal, ordinarily after 18 months. Until then it is kept secret.
- **Request for examination (s.11B).** Examination is *not* automatic — the applicant (or any interested person) must request it within the prescribed period, or the application is treated as withdrawn.

- **Examination and objections (ss.12-14).** The examiner searches for novelty and inventive step and issues a First Examination Report (FER); the applicant answers objections.
- **Pre-grant opposition (s.25(1)).** *Any person* may oppose before grant, on the grounds in s.25(1).
- **Grant (s.43).** If requirements are met, the patent is granted, sealed and entered in the Register (s.67); the grant is published.
- **Post-grant opposition (s.25(2))** may be filed by an *interested person* within 12 months of publication of grant.
- **Term (s.53).** 20 years from the filing date, subject to renewal fees.

“Acceptance” in the older scheme meant the stage at which the Controller found the application in order; in the current scheme this corresponds to the examiner’s report being met and the patent proceeding to grant.

Patents Act, 1970, s.6(1): “an application for a patent for an invention may be made by any of the following persons... (a) by any person claiming to be the true and first inventor of the invention; (b) by any person being the assignee of the person claiming to be the true and first inventor...; (c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.”

In Simple Terms: Only the real inventor (or someone he has assigned to, or his legal heir) can apply. Then the invention travels a fixed conveyor belt: file → specification → publish → request examination → examine → oppose → grant, and the patent lasts 20 years from filing.

◆ **WORKED EXAMPLE — the teacher-and-student problem**

Facts. A physics teacher explains a principle in class. A student uses that principle to build a *new working invention* producing a new result, and claims a patent.

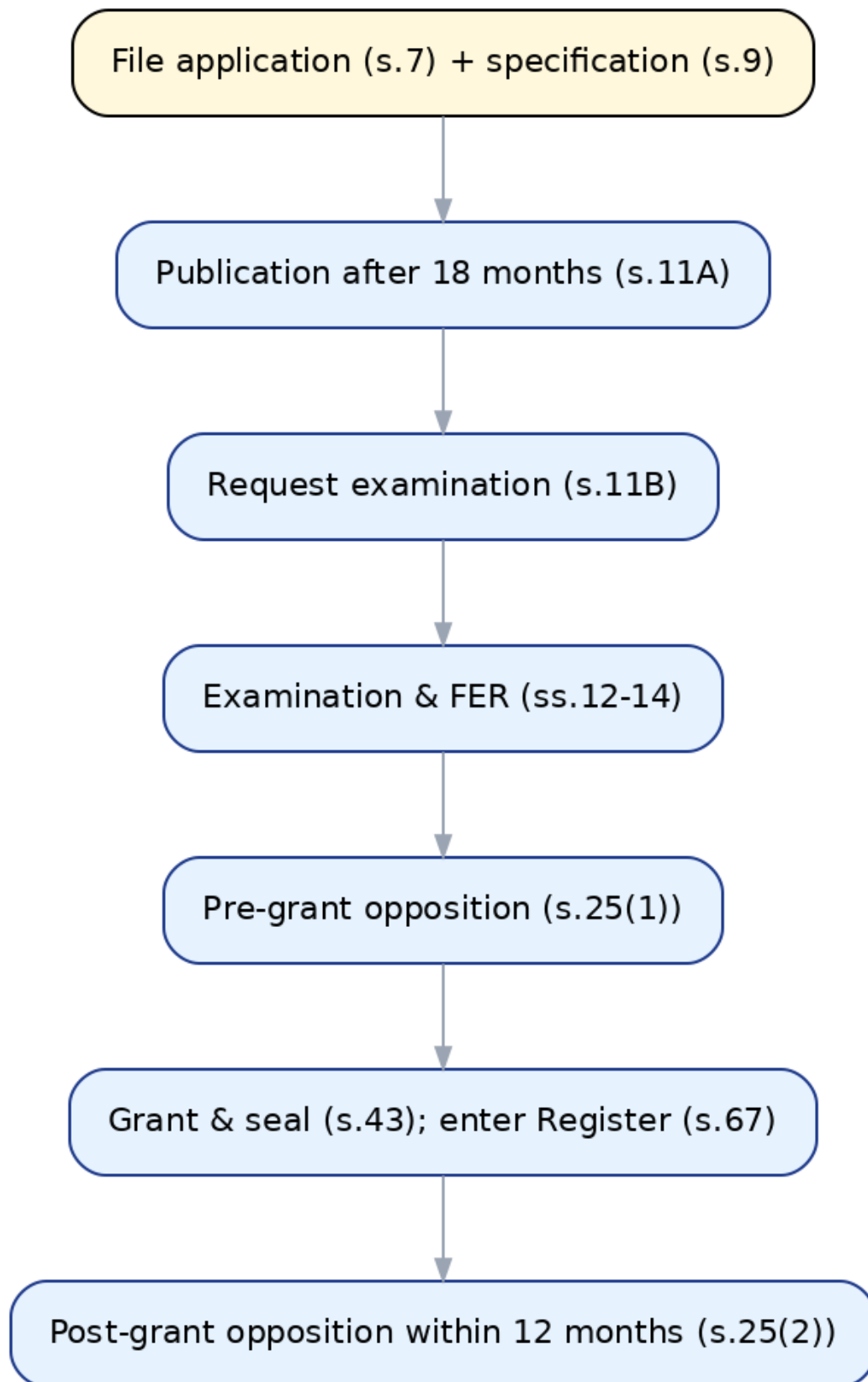
Rule. s.6 — only the true and first inventor may apply; the true and first inventor is the one who actually *devised* the invention.

Apply. The teacher merely stated a known principle; he did not devise the invention. The student *applied* the principle to create a new, working, result-producing device — so the student is the true and first inventor.

Decoy. The fact that the idea “came from” the teacher’s lecture does not make the teacher the inventor; teaching a principle is not inventing a device.

Conclusion. The student is entitled to apply and own the patent.

The Visual



Case Laws

- **V.B. Mohammed Ibrahim v Alfred Schafranek (1960)** — a mere financier or a person who only supplies money/materials is not the true and first inventor; the inventor is the one who devises.
- **Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)** — reiterated that the applicant must be the genuine inventor of a real inventive advance.

8. Specification — provisional and complete

Previous Year Questions

- **[16M]** Distinguish between provisional and complete specification. (2021, 2022, 2025) ★★
- **[8M]** Short note on specification / provisional specification. (2022, 2023, 2025, 2026) ★★

The Hook

An inventor who has the *idea* but not yet the finished detail faces a race: file now and risk an incomplete description, or wait and risk a rival filing first. The Patents Act solves this with the provisional specification — file the idea now, complete the detail within 12 months, and keep the earlier date.

What a specification is

A **specification** is the written document describing the invention, filed with the application (ss.9–10). It is the heart of the patent: it defines *what* is claimed and *how far* the monopoly reaches. There are two kinds.

A. Provisional specification

Filed to **secure the priority date** as early as possible. It *describes* the invention — the nature and broad idea — but need **not** contain the final claims. It is a placeholder that fixes the date from which novelty is judged. A complete specification must be filed **within 12 months** of the provisional, or the application lapses (s.9(1)).

B. Complete specification

The full, final document (s.10). It must:

- **fully and particularly describe** the invention and how it works;
- **disclose the best method** of performing it known to the applicant;
- **end with claims** defining the scope of protection (the claims are the legal fence); and

- be accompanied by an **abstract** for technical information.

The **claims** are decisive: infringement is judged against the claims, not the description. A vague or narrow claim gives a weak patent.

C. The link and the advantage

The great advantage of filing a provisional first is the **priority date**: novelty is tested as of the provisional's date, so any rival publication or filing *after* that date cannot defeat the patent. The inventor buys 12 months to perfect the invention without losing the queue position.

Feature	Provisional specification	Complete specification
Purpose	Secure the priority date	Full disclosure for grant
Claims	Not required	Mandatory (defines scope)
Detail	Broad description of the idea	Full, best-method description
Time limit	Complete must follow in 12 months	Filed within that 12-month window
Effect if missed	Application lapses (s.9(1))	No patent without it

Patents Act, 1970, s.9(1): “Where an application for a patent... is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.”

Patents Act, 1970, s.10(4): every complete specification shall “fully and particularly describe the invention and its operation or use and the method by which it is to be performed”, “disclose the best method”, and “end with a claim or claims defining the scope of the invention”.

In Simple Terms: A provisional specification is “I have invented something — hold my place in the queue from today.” A complete specification, filed within 12 months, is “here is the full description and, crucially, the claims that define exactly what I own.” The claims are the fence; the priority date is the queue ticket.

◆ WORKED EXAMPLE — why file provisional first

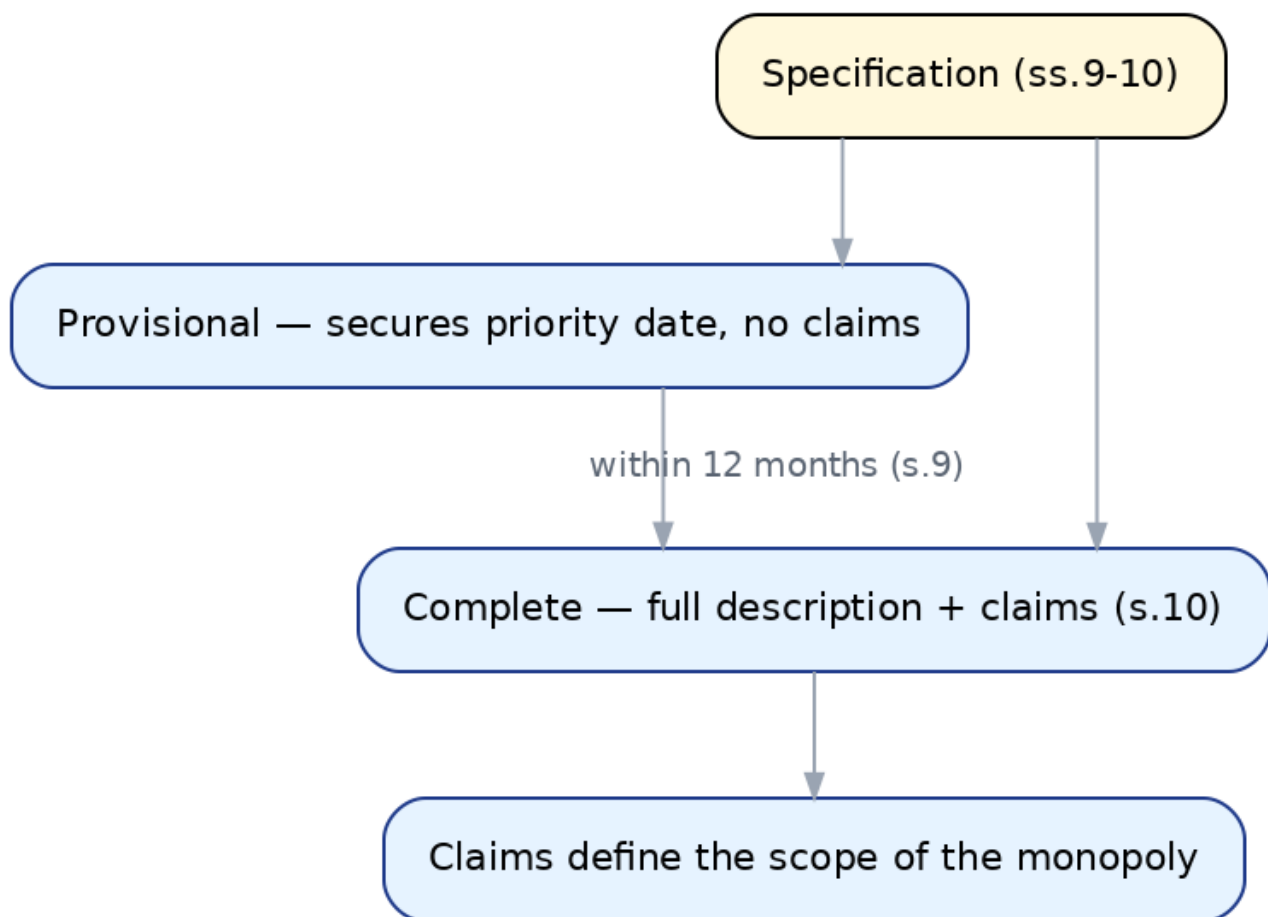
Facts. Inventor A files a provisional on 1 January describing her new engine idea. On 1 March a rival publishes the same idea. A files her complete specification on 1 December.

Rule. s.9 — novelty is tested as of the priority date fixed by the provisional; the complete must follow within 12 months.

Apply. A's priority date is 1 January. The rival's 1 March publication is *later*, so it cannot destroy A's novelty. A's complete filed on 1 December is within the 12-month window.

Conclusion. A keeps her patent; the provisional's early date defeated the intervening publication — the exact advantage of filing provisional first.

The Visual



Case Laws

- **Press Metal Corporation v Noshir Sorabji (1982)** — the function of a provisional specification is to describe the invention and fix priority, not to claim it fully.
- **Raj Prakash v Mangat Ram Chowdhry (1978)** — the claims of the complete specification determine the scope of the monopoly and what counts as infringement.

9. Rights and obligations of patentee

Previous Year Questions

- **[16M]** Explain the rights and obligations / limitations of a patentee. (2018, 2019, 2021, 2023, 2024, 2025, 2026) ★★ ★
- **[8M]** Short note on the rights of a patentee. (2021, 2022) ★★ ★

The Hook

A patent looks like an absolute right to stop the whole world. It is not. Every right the patentee holds comes paired with a limitation — a compulsory licence here, a government use there — because the monopoly exists for the public, not against it.

The rights of a patentee

Once granted, a patentee has the **exclusive rights** in s.48, which differ for products and processes:

- **For a product patent** — the exclusive right to prevent others from *making, using, offering for sale, selling, or importing* the patented product in India without consent.
- **For a process patent** — the exclusive right to prevent others from *using* the process, and from using/selling/importing the product *obtained directly by* that process.

Flowing from s.48, the patentee may also:

- **exploit** the invention himself (manufacture and sell it);
- **assign or licence** the patent to others (s.68 — see Topic 10);
- **surrender** the patent (s.63); and
- **sue for infringement** and claim injunction, damages or account of profits (s.108).

The **term** is 20 years from filing (s.53).

The obligations and limitations

The rights are *not* absolute. A patentee is subject to:

- **Working the patent.** The patentee is expected to work the invention in India commercially; failure invites a **compulsory licence** after three years (s.84) and a duty to file working statements (Form 27).
- **Compulsory licensing (ss.84, 92).** If the reasonable requirements of the public are not met, or the invention is not available at a reasonable price, or not worked in India, a third party may obtain a licence.

- **Government use and acquisition (ss.99-103).** The Central Government may use or acquire the patent for its own purposes, with compensation.
- **Payment of renewal fees (s.53).** Non-payment causes the patent to lapse.
- **No patenting of excluded subject-matter** and truthful disclosure — a patent obtained by suppression can be revoked (s.64).
- **Bolar/experimental use (s.107A)** and parallel import — others may use the invention to develop information for regulatory approval.

Patents Act, 1970, s.48: “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... from the act of using that process, and from using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.”

In Simple Terms: A patentee can stop others making, using, selling or importing the invention, and can licence or sell the patent — but must actually work it in India, pay renewal fees, and yield to compulsory licences and government use when the public interest demands. Every right has a leash.

◆ **WORKED EXAMPLE — right meets limitation**

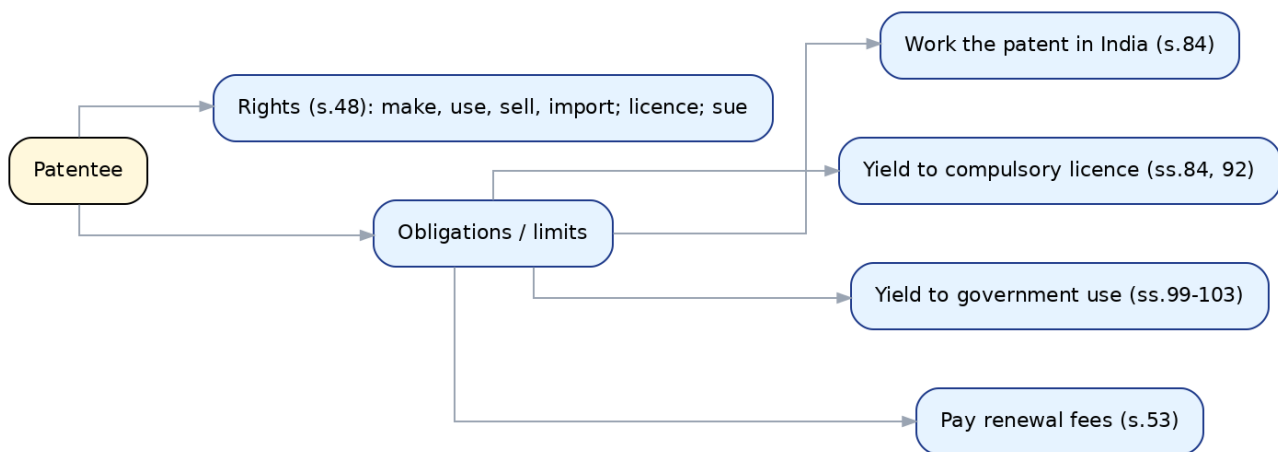
Facts. A patentee of a life-saving drug refuses to licence it and prices it beyond most patients’ reach, three years after grant.

Rule. s.48 gives exclusive rights, but s.84 allows a compulsory licence where the invention is not available at a reasonably affordable price.

Apply. The patentee’s exclusive right is real, but it is limited by s.84. A third party may apply for a compulsory licence on the “not reasonably affordable” ground.

Conclusion. The right to exclude is overridden by the public-interest limitation — exactly the pairing the examiner wants: right (s.48) + its counter-limitation (s.84). This is what happened in *Natco v Bayer (2012)*.

The Visual



Case Laws

- **Natco Pharma v Bayer Corporation (2012)** — the patentee’s exclusive right is limited by s.84; a compulsory licence was granted because the drug was neither affordable nor worked in India.
- **F. Hoffmann-La Roche v Cipla (2012/2015)** — the patentee may sue to enforce s.48 rights, but the defendant may challenge validity as a defence.

10. Transfer of patent rights — assignment and licensing

Previous Year Questions

- **[16M]** Explain the modes of transfer of patent rights — assignment and licensing. (2021) ★★
- **[8M]** Short note on assignment of patents. (2019) ★★
- **[Problem]** A co-owner assigns his share without the others’ consent / company wants to licence to multiple firms — is it valid? (2022, 2024)

The Hook

A patent is property, and like any property it can be sold, mortgaged or rented out. But because a patent can be jointly owned, one co-owner cannot simply sell “his share” — a rule that trips up many exam problems.

The modes of transfer

A patent may be transferred in three main ways (Chapter XVI, ss.68–70):

A. Assignment

An **assignment** transfers *ownership* of the patent (wholly or partly) from the patentee (assignor) to another (assignee). It may be absolute or partial (e.g. limited to a territory). To be valid it **must be in writing** and **registered** with the Controller (s.68) — an oral assignment is ineffective.

B. Licensing

A **licence** does *not* transfer ownership; it *permits* another to work the patent while the patentee retains title. Licences may be:

- **exclusive** — only the licensee (even to the exclusion of the patentee) may work it;
- **non-exclusive** — the patentee may licence several people; or
- **compulsory** (ss.84, 92) — granted by the Controller in the public interest, against the patentee's wishes.

A licence too must be in writing and registered (s.68).

C. Co-ownership — the crucial rule (s.50)

Where a patent is owned by two or more persons, each co-owner is entitled to an *equal undivided share* and may **work the invention for his own benefit** without accounting to the others. **But** — and this is the exam point — **a co-owner cannot assign his share, or grant a licence, without the consent of the other co-owner(s)** (s.50(3)). A unilateral assignment is invalid.

By contrast, a *sole* patentee may licence to as many companies as he wishes (non-exclusive licences), because there is no co-owner whose consent is needed.

Patents Act, 1970, s.68: “An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions... and duly executed.”

Patents Act, 1970, s.50(3): “a licence shall not be granted and a share shall not be assigned by one of two or more persons registered as grantee or proprietor of a patent except with the consent of the other person or persons.”

In Simple Terms: Assignment sells the patent; a licence rents it. Both must be in writing and registered. If a patent has co-owners, none of them can sell his share or licence it without the others' consent — but a single owner can licence to as many firms as he likes.

◆ WORKED EXAMPLE — the co-owner's share

Facts. A patent is jointly owned by X and Y. X assigns his share to a third party Z without Y's consent.

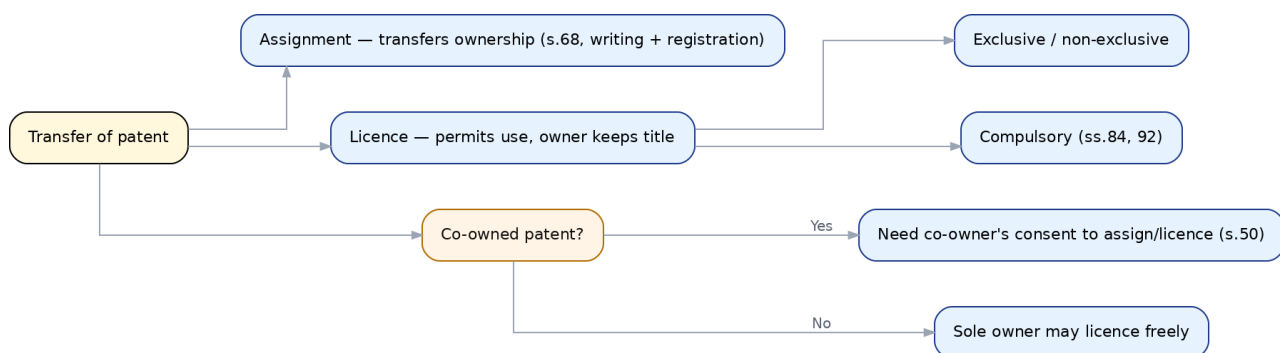
Rule. s.50(3) — a co-owner may not assign his share without the other co-owner's consent.

Apply. X assigned without Y's consent. The assignment is therefore invalid.

Decoy. The fact that X may freely *use* the invention himself (s.50(2)) does not mean he may *assign* it; using and assigning are different rights.

Conclusion. The assignment to Z is void for want of Y's consent.

The Visual



Case Laws

- **V.B. Mohammed Ibrahim v Alfred Schafranek (1960)** — clarified inventorship and the standing to deal with (assign/licence) a patent.
- **Natco Pharma v Bayer Corporation (2012)** — illustrates the compulsory (involuntary) licence as a statutory mode of transfer standing apart from voluntary assignment/licensing.

11. Compulsory licences

Previous Year Questions

- **[8M]** Short note on compulsory licences. (2024) ★

The Hook

In March 2012, India granted its first-ever compulsory licence: Natco was allowed to make Bayer's kidney-cancer drug Nexavar, dropping the price from about ₹2.8 lakh a month to

₹8,800. The patent stayed with Bayer; the public got the medicine. That is the compulsory-licence idea in one case.

What a compulsory licence is

A **compulsory licence** is a licence the Controller grants to a third party to work a patented invention **without the patentee's consent**, in the public interest. It is the main check on a patentee who sits on a patent or overprices it.

Grounds — s.84(1). After **three years** from grant, *any interested person* may apply on the ground that:

- the **reasonable requirements of the public** with respect to the invention have not been satisfied; or
- the patented invention is **not available to the public at a reasonably affordable price**; or
- the patented invention is **not worked** in the territory of India.

The Controller weighs the nature of the invention, the applicant's ability to work it, and the public interest (s.84(6)), and fixes a royalty for the patentee.

Other routes. Under **s.92**, the Central Government may notify compulsory licences in circumstances of *national emergency, extreme urgency, or public non-commercial use* (e.g. an epidemic). Under **s.92A**, compulsory licences may be granted for *export* of medicines to countries with insufficient manufacturing capacity.

Patents Act, 1970, s.84(1): "At any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely — (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or (b) that the patented invention is not available to the public at a reasonably affordable price, or (c) that the patented invention is not worked in the territory of India."

In Simple Terms: If a patentee, three years after grant, is not meeting public demand, is charging too much, or is not making the product in India, the Controller can let someone else make it — paying the patentee a royalty. The patent survives; the monopoly bends to public need.

◆ WORKED EXAMPLE — the three-year, three-ground test

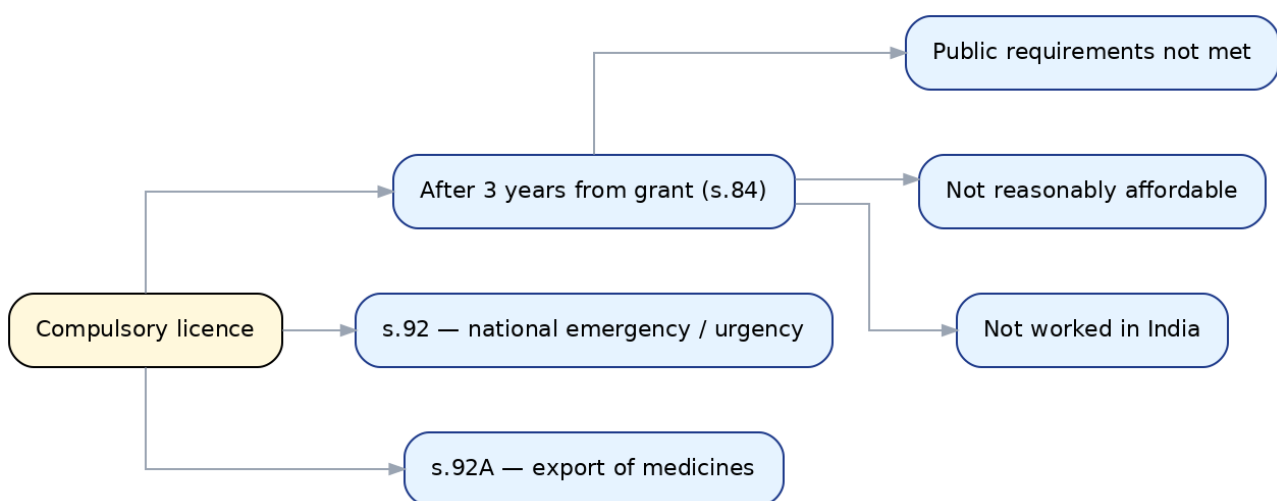
Facts. Two years after grant, an applicant seeks a compulsory licence on a patented drug, arguing it is too expensive.

Rule. s.84 — a compulsory licence may be sought only *after three years* from grant, on the affordability/availability/working grounds.

Apply. Only two years have passed, so the application is premature regardless of price. After three years, the “not reasonably affordable” ground would be available.

Conclusion. The application fails now for the timing bar; it could succeed after the three-year period — as in *Natco v Bayer (2012)*.

The Visual



Case Laws

- **Natco Pharma v Bayer Corporation (2012)** — India’s first compulsory licence; all three s.84 grounds were satisfied for the anti-cancer drug Nexavar.
- **BDR Pharmaceuticals v Bristol-Myers Squibb (2013)** — a compulsory-l licence applicant must first make a genuine effort to obtain a voluntary licence on reasonable terms.

12. Government use / acquisition of patented inventions

Previous Year Questions

- **[16M]** Explain the provisions relating to use and acquisition of patented inventions by the Government. (2024) ★
- **[8M]** Short note on government use of patents. (2024) ★
- **[Problem]** The Central Government uses a patented drug at public dispensaries without permission; the patentee sues. Advise. (2021)

The Hook

When a government fights an epidemic, it cannot wait for licence negotiations. The Patents Act lets the State use — or even buy outright — any patent for a public purpose, paying the patentee afterwards. Necessity trumps monopoly.

Government use and acquisition

Two distinct powers must be kept apart:

A. Government use (ss.100-102)

Under **s.100**, the Central Government (or anyone authorised by it) may **use a patented invention for the purposes of the Government**. Key features:

- it may be exercised *even before* the patent is granted;
- “purposes of Government” includes supply to any government department and public health programmes;
- the patentee is **not stopped**, but is **paid** — the terms are agreed or, failing agreement, settled by the High Court (s.103).

So government use is a *statutory licence*: the patentee keeps the patent but must tolerate the government’s use in return for compensation. It is *not* infringement.

B. Acquisition (s.102)

Under **s.102**, the Central Government may, by notification, **acquire a patent** outright for a public purpose — ownership itself passes to the Government, and compensation is paid to the (former) patentee. This is the stronger power: use borrows the patent, acquisition takes it.

Patents Act, 1970, s.100(1): “at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorised in writing by it, may use the invention for the purposes of Government in accordance with the provisions of this Chapter.”

In Simple Terms: The Government can *use* your patent for public purposes and pay you (government use, s.100), or *take over* the patent completely by notification and pay you (acquisition, s.102). Either way it is lawful — the remedy is compensation, not an injunction.

◆ WORKED EXAMPLE — the dispensary problem

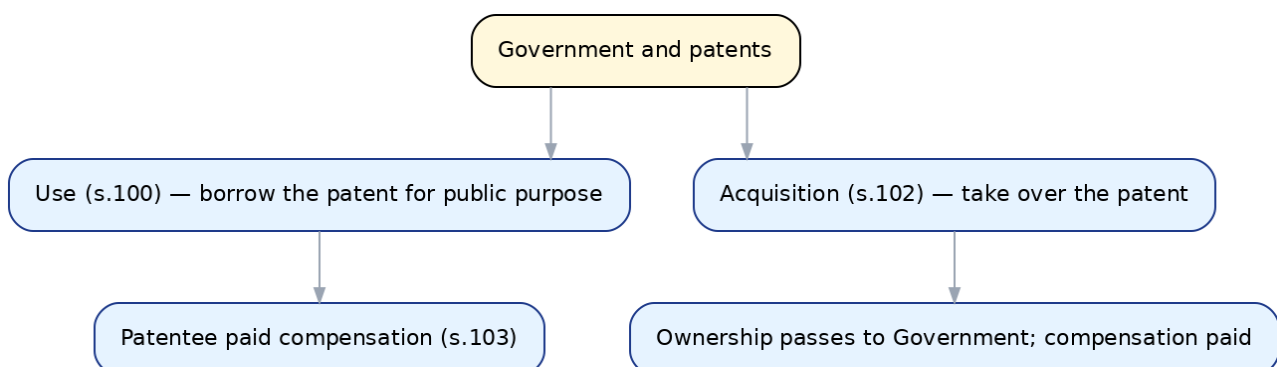
Facts. The Central Government uses a company’s patented drug at its public dispensaries without the patentee’s permission. The patentee wants to sue for infringement.

Rule. s.100 — the Government may use a patented invention for the purposes of Government; the patentee’s remedy is compensation (s.103), not an injunction.

Apply. Supplying medicine at public dispensaries is a “purpose of Government”. The use is authorised by s.100, so it is not infringement. The patentee cannot stop it but can claim compensation.

Conclusion. The infringement suit fails; the patentee is entitled only to agreed or court-settled compensation.

The Visual



Case Laws

- **Natco Pharma v Bayer Corporation (2012)** — shows the public-interest philosophy that also animates ss.100–102; the acquisition and compensation mechanism itself is governed by ss.100–103 (with compensation under s.103).

13. Revocation and surrender of patents

Previous Year Questions

- **[16M]** Explain the grounds for revocation of a patent. (2019) ★★
- **[8M]** Short note on revocation / surrender of patents. (2021, 2024) ★★
- **[Problem]** A obtains an Indian patent; six months later B, a US citizen, shows the same invention was already patented in the US before A's filing. (2019)

The Hook

A patent granted is not a patent guaranteed. If it turns out the “invention” was already known, or already claimed by someone earlier, the patent can be struck off — even years later. In gene therapy, Anand's Indian patent fell exactly this way when a prior US patent surfaced.

Two ways a patent ends early

A. Surrender — s.63

A patentee may, at any time, **offer to surrender** his patent by notice to the Controller. It is *voluntary* — the patentee gives up the patent himself (e.g. because he cannot pay renewal fees or the patent is weak). The Controller advertises the offer; interested persons may oppose; if accepted, the patent is revoked.

B. Revocation — s.64

Revocation is the *cancellation* of a patent, on petition to the High Court (or as a counter-claim in an infringement suit), by any interested person or the Central Government. The grounds in **s.64** include:

- the invention was **not novel** — already publicly known or used, or anticipated by prior publication;
- the invention was **already claimed** in an earlier patent of prior priority date (**prior claiming**);
- the invention is **obvious / lacks inventive step**;
- the invention is **not patentable** (falls under s.3/s.4);
- the specification does **not sufficiently describe** the invention or the claims are unclear;
- the patent was obtained by **false suggestion or misrepresentation**;
- the applicant was **not entitled** to apply (wrong person);
- **non-disclosure of foreign filings** (s.8) or wrongful obtaining.

Under **s.65**, a patent for an invention later found to relate to **atomic energy** may be revoked.

Patents Act, 1970, s.64(1): “a patent... may, on the petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent, be revoked by the High Court on any of the following grounds...” — including want of novelty, prior claiming, obviousness, insufficiency of description and false suggestion.

In Simple Terms: Surrender is the owner voluntarily handing the patent back (s.63). Revocation is a court cancelling it (s.64) because it should never have been granted — it was not new, was already claimed by someone earlier, was obvious, or was obtained by a lie.

◆ WORKED EXAMPLE — the prior-claiming problem

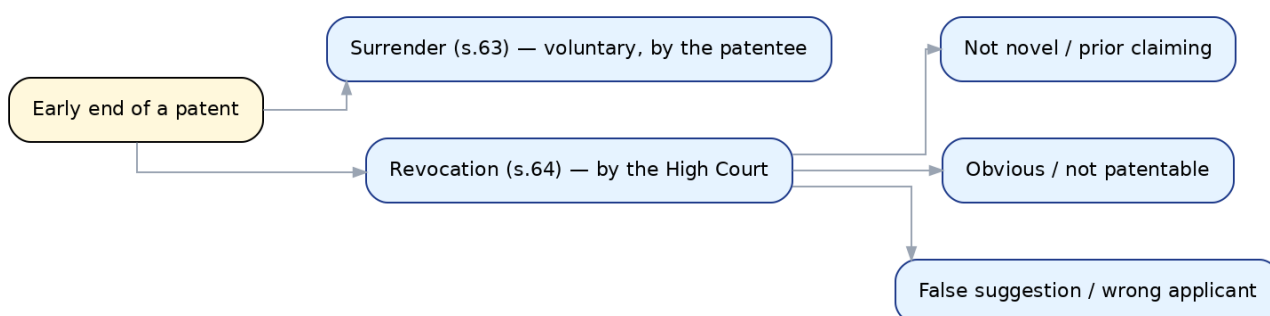
Facts. Anand obtains an Indian patent in gene therapy. Six months later Maggie, a US citizen, shows the same invention was already the subject of a US patent with an earlier priority date.

Rule. s.64 — a patent may be revoked if the invention was already claimed in a patent of prior priority date (prior claiming) or was not novel.

Apply. The prior US patent has an earlier priority date and claims the same invention, so Anand’s invention was not novel / was already claimed. This is a ground for revocation.

Conclusion. Anand’s patent is liable to be revoked under s.64 on the prior-claiming / lack-of-novelty ground.

The Visual



Case Laws

- **Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)** — a patent lacking novelty or inventive step is liable to be revoked.
- **Novartis AG v Union of India (2013)** — a patent claiming non-patentable subject-matter (s.3(d)) is invalid and cannot stand.

14. Infringement of patents and remedies

Previous Year Questions

- **[16M]** What acts constitute infringement of a patent? Discuss the remedies available. (2022, 2023, 2024, 2026) ★★
- **[8M]** Short note on remedies for patent infringement. (2023, 2024) ★★

The Hook

When Roche sued Cipla over the lung-cancer drug Tarceva, the whole case turned on one question every infringement suit asks: did the defendant's product fall *within the claims* of the patent? The claims are the fence; crossing it is infringement.

What amounts to infringement

There is no exhaustive statutory definition; infringement is the doing, **without the patentee's consent**, of any act that s.48 reserves to the patentee. Concretely:

- **making, using, selling, offering for sale, or importing** the patented *product* (product patent); or
- **using the patented process**, or using/selling/importing the product *directly obtained* by that process (process patent).

Infringement is judged against the **claims** of the complete specification (Topic 8), applying two tests: the **literal infringement** test (does the defendant's product fall within the words of the claim?) and the **doctrine of pith and marrow / equivalents** (has the defendant taken the essential features even if trivially varied?).

Defences (s.107 read with s.64 grounds)

A defendant may plead:

- **invalidity** of the patent (any s.64 ground) — the most common counter-attack;
- that the acts fall within an **exception** — experimental/research use, government use (s. 100), or **Bolar exemption** (s.107A: use to develop regulatory data);
- **parallel importation** (s.107A(b)); or
- that the acts are **outside the claims**.

Remedies (s.108)

In a suit (filed in a District Court, or the High Court if validity is challenged — s.104), the court may grant:

- **injunction** — temporary (during trial) and permanent (final) — to stop the infringing acts;
- at the plaintiff's option, **damages** or an **account of profits** (not both);
- **delivery up or destruction** of the infringing goods; and
- **costs**.

Patents Act, 1970, s.108(1): “The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.”

In Simple Terms: Infringement is anyone doing what only the patentee may do (make, use, sell, import the invention) without permission — measured against the patent's claims. The patentee can get an injunction, plus either damages or the infringer's profits, plus delivery-up. The defendant usually fights back by attacking the patent's validity.

◆ WORKED EXAMPLE — claims decide it

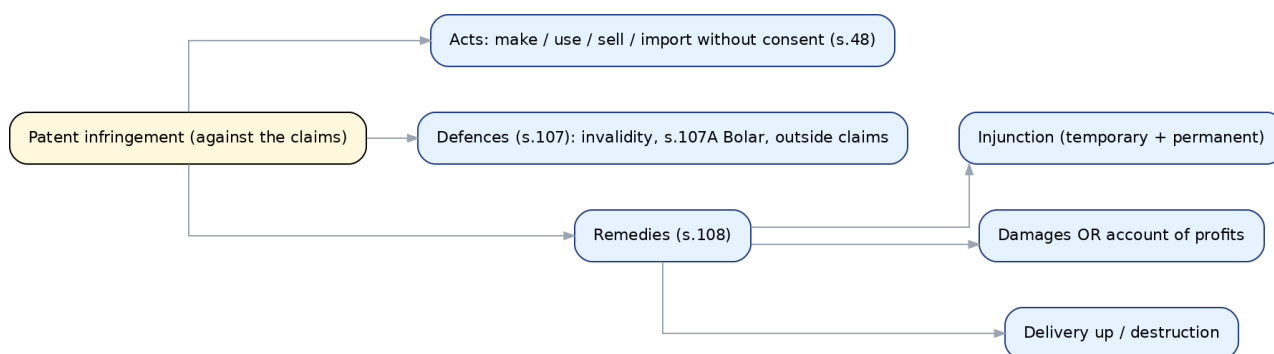
Facts. A patentee's claim covers a machine with parts A + B + C. The defendant sells a machine with parts A + B + C + a trivially different casing.

Rule. Infringement is judged against the claims; taking the essential features (pith and marrow) is enough.

Apply. The defendant's machine contains all essential claimed features (A + B + C); the cosmetic casing change does not avoid infringement.

Conclusion. Infringement is made out; the patentee may seek an injunction and damages or account of profits under s.108.

The Visual



Case Laws

- **F. Hoffmann-La Roche v Cipla (2012/2015)** — infringement turns on whether the defendant's product falls within the patent claims; validity may be raised as a defence.
- **Raj Prakash v Mangat Ram Chowdhry (1978)** — infringement is decided by the pith and marrow of the claims, not trivial variations.
- **Bajaj Auto v TVS Motor (2009)** — the Supreme Court urged speedy trial of patent infringement suits.

15. Patent agent

Previous Year Questions

- **[8M]** Short note on patent agent — who may be registered and their functions. (2018, 2019, 2021) ★★
- **[Problem]** A petitioner challenges s.126 as violating Article 19(1)(g) because it bars non-registered persons from practising as patent agents. (2021)

The Hook

Drafting a patent is part law, part science — a claim badly worded can lose a fortune. So the Act creates a special professional, the patent agent, and reserves the work to those who qualify. When one petitioner argued this monopoly violated his freedom of trade, the court had to weigh s.126 against Article 19(1)(g).

Who is a patent agent?

A **patent agent** is a person registered under the Act who is entitled to practise before the Patent Office — drafting specifications, filing applications and prosecuting them (ss.125–132).

Qualifications — s.126. A person may be registered as a patent agent if he:

- is a **citizen of India**;
- has **completed the age of 21** years;
- holds a **degree in science, engineering or technology** from a recognised university; and
- has **passed the qualifying examination** prescribed (or, formerly, was an existing practitioner). (*An advocate's qualification alone is no longer sufficient; the science-degree and exam requirements were tightened.*)

Functions — s.127. A registered patent agent may:

- **practise before the Controller** and the Patent Office;

- **prepare and draft** patent specifications and other documents; and
- **do all things** connected with a patent application on a client's behalf.

The restriction — s.129. No person, other than a **registered patent agent** (or the applicant himself), may practise, describe himself as a patent agent, or draft specifications for reward. This reservation was upheld as a reasonable restriction on the freedom of trade.

Patents Act, 1970, s.126(1): “A person shall be qualified to have his name entered in the register of patent agents if he fulfils the following conditions, namely — (a) he is a citizen of India; (b) he has completed the age of 21 years; (c) he has obtained a degree in science, engineering or technology from any university... and... has passed the qualifying examination prescribed for the purpose.”

In Simple Terms: A patent agent is a qualified professional — Indian citizen, 21+, science/engineering degree, passed the exam — who alone may draft patent specifications and act before the Patent Office for reward. The rule reserving this work to registered agents is a valid limit on freedom of trade, because patent drafting needs technical skill.

◆ WORKED EXAMPLE — the constitutional challenge

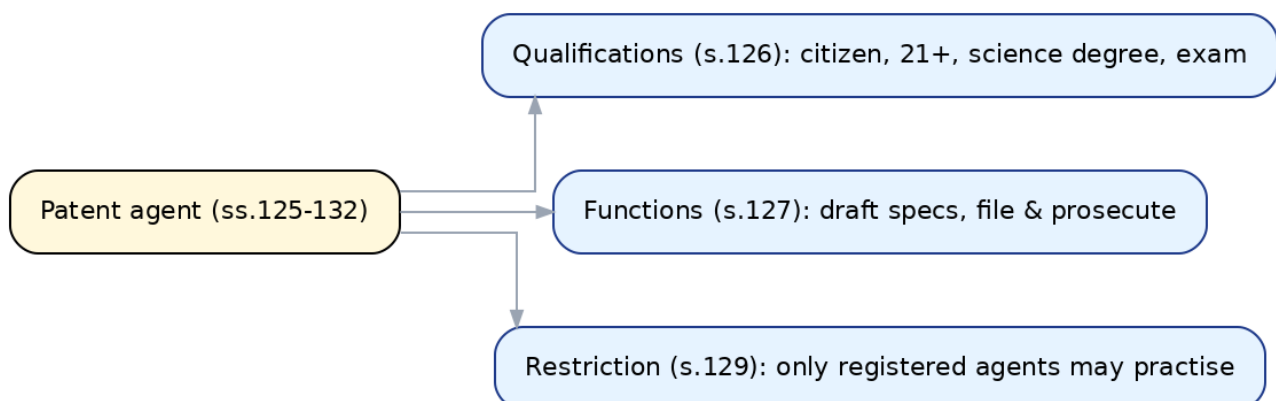
Facts. A petitioner challenges s.126, arguing that reserving patent-agent work to science graduates who pass an exam violates his Article 19(1)(g) right to practise a profession.

Rule. Article 19(6) permits *reasonable restrictions* in the public interest, including professional-qualification requirements.

Apply. Patent drafting requires technical competence; requiring a science degree and an exam is a reasonable, non-arbitrary restriction protecting applicants from incompetent drafting.

Conclusion. s.126 is constitutionally valid; the restriction on who may practise is reasonable under Article 19(6).

The Visual



Case Laws

- **Anvita Singh v Union of India (Delhi HC, 2012)** — struck down the rule requiring a minimum 50% in the viva-voce of the Patent Agent Examination as arbitrary and excessive. It did not decide the validity of the s.126 qualification conditions themselves (citizenship, age 21+, science degree, qualifying exam), which remain the governing requirements for entry on the register.
- **Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)** — patent work rests on genuine technical competence, the rationale for reserving agency to qualified persons.

16. Product patent and process patent

Previous Year Questions

- This foundational distinction has not been asked as a standalone question, but it underlies the patentability, 2005-amendment and infringement answers.

The Hook

The difference between owning “the pill” and owning “the way to make the pill” decided the fate of India’s generic-medicine industry. Before 2005 India gave only the second; after 2005 it gives both.

The distinction

- A **process patent** protects only the **method** of making a product. A rival who reaches the *same* product by a *different* method does not infringe. This is weaker protection.
- A **product patent** protects the **product itself**, *however it is made*. Any rival making that product — by any method — infringes. This is stronger protection.

Why it matters in India. Under the old **s.5** of the 1970 Act, food, medicine and chemical inventions could get *only process patents* — deliberately, to keep medicines cheap by letting Indian firms make patented drugs by alternative processes. The **2005 amendment deleted s.5**, introducing **product patents** for these fields to comply with TRIPS Article 27 (patents in *all* fields of technology).

TRIPS Agreement, 1994, Art. 27(1): “patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.”

In Simple Terms: A process patent guards the *recipe*; a product patent guards the *dish* no matter whose recipe made it. India switched from recipe-only (for drugs and food) to guarding the dish itself in 2005.

◆ **WORKED EXAMPLE — same molecule, different route**

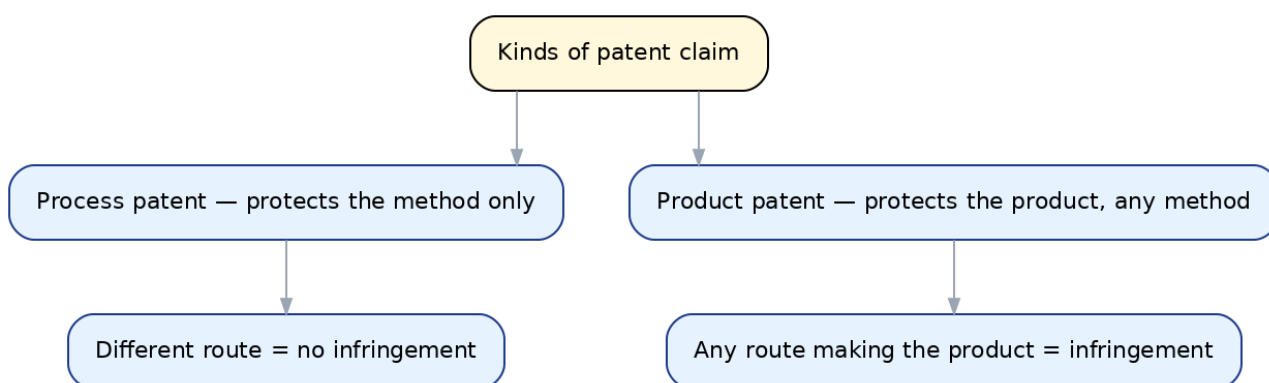
Facts. Company A holds a *process* patent for making a drug by Route 1. Company B makes the identical drug by Route 2.

Rule. A process patent protects only the claimed process; a different process reaching the same product does not infringe.

Apply. B used Route 2, not A's Route 1, so B does not infringe A's process patent — even though the product is identical. Had A held a *product* patent, B would infringe regardless of route.

Conclusion. Under a process patent B is free; the example shows exactly why product patents are stronger and why 2005 mattered.

The Visual



Case Laws

- **Novartis AG v Union of India (2013)** — arose directly from the post-2005 product-patent regime and the s.3(d) limit on it.
- **F. Hoffmann-La Roche v Cipla (2012)** — enforcement of a product patent, illustrating its "any method" reach.

17. Opposition proceedings to grant of patents

Previous Year Questions

- **[Problem]** X applies for a patent on 01/03/2022; Y opposes, saying he made the same invention on 25/02/2022 though he never filed. / Within a year of publication of grant, a public-interest objector opposes an anti-cancer patent. (2023, 2025)

The Hook

The patent system lets outsiders challenge a patent *before* it is sealed — and again shortly after. This two-window system stops bad patents at the gate rather than fighting them for years in court.

The two oppositions — s.25

A. Pre-grant opposition — s.25(1)

Any person (not only an interested person) may, after publication of the application but **before grant**, oppose in writing by way of representation to the Controller. It is cheap and open to the public. Grounds (s.25(1)(a)–(k)) include:

- **wrongful obtaining** of the invention;
- **prior publication** or **prior claiming** (the invention was already published or claimed earlier);
- **prior public knowledge or use** in India;
- **obviousness / lack of inventive step**;
- the subject is **not an invention** (s.3/s.4) or **not patentable**;
- **insufficient disclosure**; and
- **non-disclosure or wrong information** under s.8.

B. Post-grant opposition — s.25(2)

Only a **person interested** may oppose, by notice, **within 12 months** of the date of publication of the *grant*. It is heard by an Opposition Board and the Controller, on grounds largely mirroring s.25(1).

The difference in a line: pre-grant is *anyone, before grant*, by representation; post-grant is *a person interested, within 12 months of grant*, by notice before a Board.

Patents Act, 1970, s.25(1): “where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent...”; **s.25(2):** “at any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller...”

In Simple Terms: There are two chances to block a patent. Before it is granted, *anybody* can object (s.25(1)). After grant, only someone with a real interest can object, and only within one year (s.25(2)). Common grounds are “it isn’t new”, “it was already claimed”, or “it’s obvious”.

◆ WORKED EXAMPLE — the un-filed earlier inventor

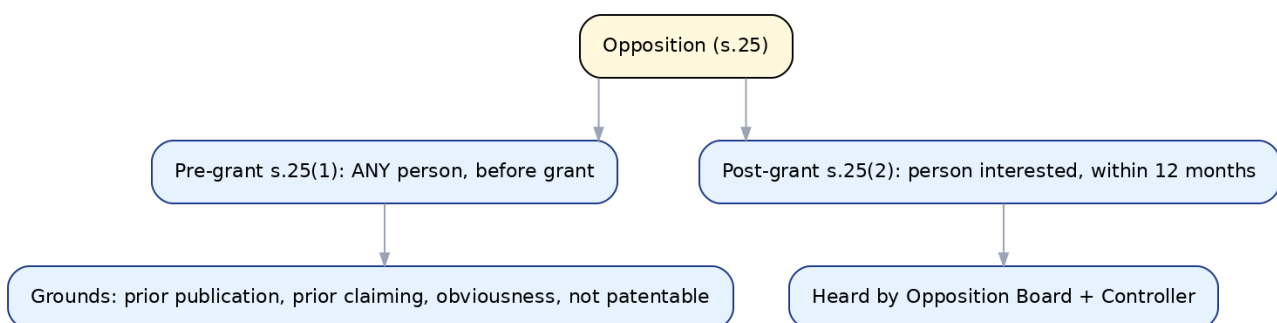
Facts. X files a patent application on 01/03/2022. Y opposes, claiming he made the same invention on 25/02/2022 but never filed anything.

Rule. s.25(1) — grounds include prior *publication* or prior *public use/knowledge*; mere private prior invention that was never published or used is not by itself a ground, but prior public knowledge is.

Apply. If Y’s earlier invention was never published, used publicly, or claimed, X’s application is not defeated merely because Y “thought of it first” privately — patents follow first-to-file. But if Y had publicly disclosed or used it before 01/03/2022, that anticipation defeats X’s novelty.

Conclusion. Y’s opposition succeeds only if his prior invention was public before X’s priority date; a purely private earlier idea does not defeat X.

The Visual



Case Laws

- **Novartis AG v Union of India (2013)** — began with a pre-grant opposition to the Glivec application, showing the mechanism’s importance.
- **Cipla v F. Hoffmann-La Roche (2012)** — validity grounds overlapping with opposition grounds were litigated post-grant.

18. Register of patents and Patent Office

Previous Year Questions

- This administrative topic has not been asked directly; know it as supporting detail for the procedure answer.

The Hook

Every granted patent lives on a public list — the Register of Patents — so anyone can check who owns what, and buyers can verify title before paying for a licence. The Patent Office keeps that list.

The Patent Office and the Register

The **Patent Office** (headed by the **Controller General of Patents, Designs and Trade Marks**) administers the Act: it receives applications, examines them, grants patents and keeps the records. It has a head office and branch offices; the branch depends on where the applicant resides or carries on business.

The **Register of Patents (s.67)** is the official record kept at the Patent Office. It contains:

- the **names and addresses** of grantees (patentees);
- **notifications of assignments, transmissions, licences, amendments, extensions and revocations**; and
- particulars affecting the **validity or proprietorship** of every patent.

The Register is **prima facie evidence** [accepted as true unless disproved] of the entries in it (s.67(3)), and it is **open to public inspection** (s.72). Anyone dealing in a patent — a buyer, a licensee — relies on it to confirm ownership.

Patents Act, 1970, s.67(1): “There shall be kept at the patent office a register of patents... wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents...”

In Simple Terms: The Patent Office runs the patent system; the Register of Patents (s.67) is its public logbook of who owns each patent and every dealing with it. Because the Register is public and treated as evidence, it is where you check title before buying or licensing a patent.

◆ WORKED EXAMPLE — checking title before a licence

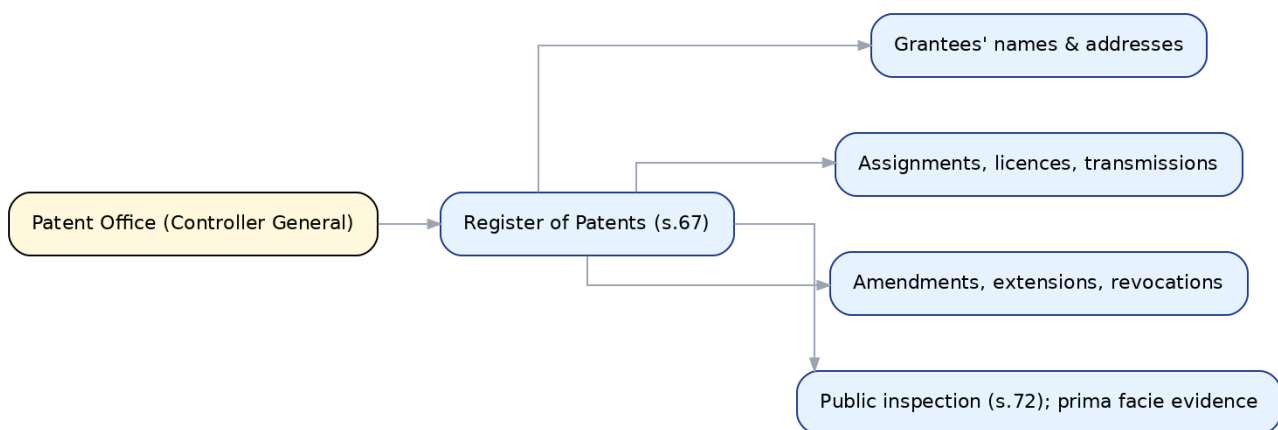
Facts. A company wants to take a licence of a patent but is unsure the licensor really owns it.

Rule. s.67 — the Register records proprietorship and dealings and is prima facie evidence of them; s.72 makes it open to inspection.

Apply. The company inspects the Register, confirms the licensor is the entered proprietor with no prior conflicting assignment, and then takes the licence, which it also registers.

Conclusion. The Register lets a third party verify title safely — its core practical function.

The Visual



Case Laws

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — recognised the Patent Office's role in examining and recording patents.
- ***Raj Prakash v Mangat Ram Chowdhry (1978)*** — proprietorship and the scope of a patent are established from the record kept by the Patent Office.

19. Offences and penalties under the Patents Act

Previous Year Questions

- Not asked directly; a one-line add-on where an infringement essay invites it.

The Hook

You cannot stamp “Patented” on a product that is not patented — doing so misleads the public and is a punishable offence. The Act’s penalty provisions guard the *integrity* of the patent label, separate from the civil suit for infringement.

The main offences

These are *criminal* penalties (fines, sometimes imprisonment), distinct from the civil remedies for infringement in Topic 14:

- **s.118 — contravention of secrecy directions** (s.35, inventions relevant to defence): imprisonment up to 2 years, or fine, or both.
- **s.120 — unauthorised claim of patent rights.** Falsely representing that an article is patented (e.g. marking it “patent” or “patented” when it is not) — fine which may extend to ₹1,00,000.
- **s.121 — wrongful use of the words “patent office”.** Using words suggesting a place of business is officially connected to the Patent Office — punishable with fine.
- **s.122 — refusal or failure to supply information** to the Controller/Central Government, or supplying false information — fine, and for false information imprisonment up to 6 months.
- **s.123 — practising as a patent agent when not registered** — fine.

The point of these offences is public protection: they keep people from *lying* about patent status or obstructing the Patent Office, which the civil infringement action does not address.

Patents Act, 1970, s.120: *“If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, he shall be punishable with fine which may extend to one lakh rupees.”*

In Simple Terms: Beyond suing infringers, the Act punishes cheating *about* patents — falsely calling a product “patented” (s.120), misusing the words “patent office” (s.121), lying to the Controller (s.122), or posing as a patent agent without registration (s.123). These are fines/imprisonment, not damages.

◆ WORKED EXAMPLE — the false “patented” label

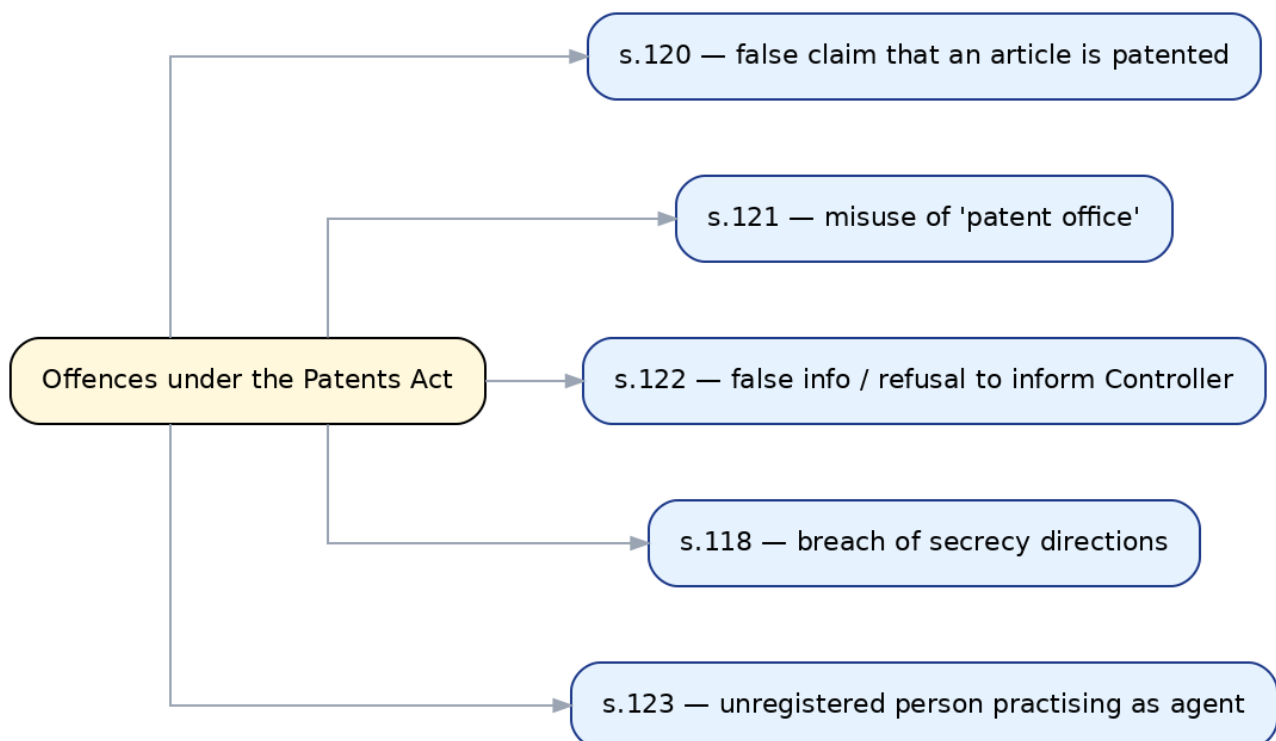
Facts. A trader stamps “Patented in India” on a product for which no patent or application exists, to impress buyers.

Rule. s.120 — falsely representing that an article is patented is an offence punishable with a fine up to ₹1,00,000.

Apply. The trader’s stamp is a false representation of patent status, squarely within s. 120, regardless of whether anyone was actually deceived.

Conclusion. The trader commits an offence under s.120 and is liable to a fine up to ₹1,00,000.

The Visual



Case Laws

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — underlines that patent rights (and misrepresentation of them) must rest on a genuine grant.

Landmark Cases — in Brief

Novartis AG v Union of India (2013) — the s.3(d) anti-evergreening case

Facts.

Novartis sought a patent on the beta-crystalline form of imatinib mesylate (the cancer drug Glivec), a new *form* of a known substance.

Issue.

Was the new form patentable, given s.3(d)'s bar on a mere new form of a known substance without enhanced efficacy?

Held.

The Supreme Court refused the patent: the new form did not show enhanced *therapeutic* efficacy, so it fell within s.3(d) and was not patentable.

Why it matters.

It is the leading authority on s.3(d), on “evergreening”, and on patent law balancing monopoly against public access to medicine.

Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979) — novelty and inventive step

Facts.

A patent was granted for a method/device for manufacturing utensils; a rival challenged it as an obvious workshop improvement.

Issue.

Did the invention involve novelty and an inventive step, or was it obvious to a skilled worker?

Held.

The Supreme Court held the alleged invention was obvious and lacked inventive step, and the patent was invalid.

Why it matters.

The foundational Indian statement of novelty, inventive step and the object of patent law.

Natco Pharma v Bayer Corporation (2012) — India's first compulsory licence

Facts.

Bayer's anti-cancer drug Nexavar was priced at about ₹2.8 lakh a month and barely worked in India; Natco sought a compulsory licence.

Issue.

Were the s.84 grounds (public requirements, affordability, working in India) satisfied?

Held.

The Controller granted India's first compulsory licence; all three grounds were met and Natco was allowed to make the drug on payment of royalty.

Why it matters.

The landmark application of s.84 and the public-interest limit on the patentee's monopoly.

Quick Revision & Case Law Table

One-line memory hooks

- **Concept of property:** property is a bundle of rights; industrial (commercial, registered) vs non-industrial/artistic (copyright, automatic).
- **Kinds of IP:** five boxes — patent, trade mark, copyright, design, GI; intangible, territorial, time-limited, statutory.
- **Growth & justification of IPR:** Venice 1474 → Statute of Monopolies 1624 → Paris 1883 → TRIPS 1994; justified by labour, reward, economic and disclosure theories.
- **Meaning & object of patent:** a 20-year monopoly for disclosure (quid pro quo); needs novelty + inventive step + industrial application.
- **Scope of Patents Act 1970:** 2005 amendment = product patents (s.5 deleted) + s. 3(d) anti-evergreening.
- **Patentable / non-patentable:** positive test (s.2(1)(j)) then blacklist ss.3–4; s.3(i) treatment, s.3(k) software, s.4 atomic energy.
- **Procedure:** true & first inventor (s.6) → file → specification → publish (s.11A) → request exam (s.11B) → oppose → grant (s.43).
- **Specification:** provisional secures priority (no claims); complete has full description + claims within 12 months (s.9).
- **Rights of patentee:** s.48 exclusive rights, 20-year term (s.53); leashed by working, compulsory licence, government use.
- **Transfer:** assignment (ownership) vs licence (permission); writing + registration (s.68); co-owner needs consent (s.50).
- **Compulsory licence:** after 3 years, on public-requirement / affordability / non-working grounds (s.84).
- **Government use / acquisition:** use and pay (s.100) vs take over and pay (s.102); remedy is compensation, not injunction.

- **Revocation & surrender:** surrender is voluntary (s.63); revocation by High Court on s. 64 grounds (novelty, prior claiming, obviousness).
- **Infringement & remedies:** judged against the claims; injunction + damages or account of profits + delivery up (s.108).
- **Patent agent:** citizen, 21+, science degree, exam (s.126); only registered agents may practise (s.129).
- **Product vs process patent:** product guards the thing however made; process guards only the method; India switched in 2005.
- **Opposition:** pre-grant s.25(1) any person before grant; post-grant s.25(2) person interested within 12 months.
- **Register & Patent Office:** Register (s.67) is the public logbook of ownership and dealings; prima facie evidence.
- **Offences:** false “patented” claim (s.120), misuse of “patent office” (s.121), false info (s.122) — criminal, not civil.

Master Case List for Unit 1

Case	Topic	One-line ratio
Novartis AG v Union of India (2013)	Patentability / s.3(d)	New form without enhanced efficacy is not patentable.
Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)	Object / novelty	An obvious workshop improvement lacks inventive step.
Natco Pharma v Bayer Corporation (2012)	Compulsory licence	First s.84 compulsory licence; monopoly yields to public need.
F. Hoffmann-La Roche v Cipla (2012/2015)	Infringement	Infringement is judged against the patent claims; validity is a defence.
Raj Prakash v Mangat Ram Chowdhry (1978)	Specification / infringement	The claims define the monopoly and what infringes.

Case	Topic	One-line ratio
V.B. Mohammed Ibrahim v Alfred Schafranek (1960)	Who may apply	A financier is not the true and first inventor.
Diamond v Chakrabarty (1980)	Patentable subject-matter	A man-made micro-organism can be patented.
Press Metal Corporation v Noshir Sorabji (1982)	Specification	A provisional describes and fixes priority; it need not claim.
BDR Pharmaceuticals v Bristol-Myers Squibb (2013)	Compulsory licence	Must first seek a voluntary licence on reasonable terms.
Bajaj Auto v TVS Motor (2009)	Infringement	Patent infringement suits must be tried speedily.

End of Unit 1.