

Intellectual Property Rights-I

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

KSLU LL.B. Study Bundle

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Notes Version: **v1.2**

October 2026

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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 *understand*
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

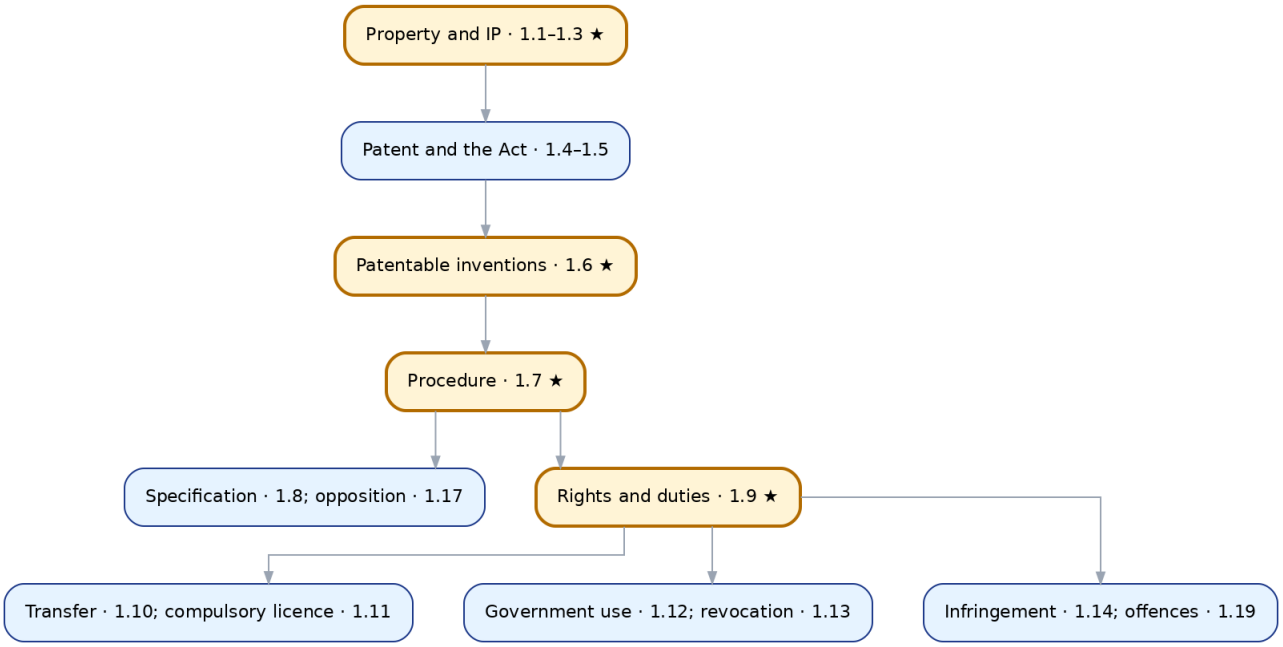
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In this unit.

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.

The Big Picture

The unit in two lines. Unit 1 explains what intellectual property is and then follows the patent through its whole life — from invention to grant, use, transfer, challenge and end. Nineteen topics, but one story: what can be patented, how it is obtained, and what the patentee may and may not do.



Read down the line of a patent's life: what IP is, what can be patented, how a patent is obtained, and then what the patentee may do and how the patent can be limited or lost. Starred boxes hold the five-star topics; agents, product/process patents and the Patent Office (1.15, 1.16, 1.18) sit beside the procedure.

Hold on to these

- **IP is property in creations of the mind** — industrial property (patents, marks, designs, GI) and copyright → 1.1, 1.2.
- **A patent is a bargain** — a 20-year monopoly in return for full disclosure → 1.3, 1.4, 1.8.
- **Three tests and a blacklist** — new, inventive step, industrial application; and not excluded by s.3 or s.4 → 1.6.
- **The monopoly has public-interest limits** — compulsory licences, government use, revocation → 1.11–1.13.

Tests and distinctions

- **Inventive step:** not obvious to a person skilled in the art → 1.6, 1.13.
- **s.3(d):** a new form of a known substance needs enhanced (therapeutic) efficacy → 1.6.
- **Assignment or licence?** Assignment passes ownership; a licence only permits use → 1.10.

Cases to name

- *Novartis AG v Union of India (2013)* — s.3(d) and evergreening → 1.5, 1.6, 1.17.
- *Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)* — novelty and inventive step → 1.4, 1.13, 1.14.
- *Bayer Corporation v Union of India (2014)* — India's first compulsory licence upheld → 1.11.
- *F. Hoffmann-La Roche v Cipla (2015)* — infringement read from the claims → 1.9, 1.14.

Where the marks are

Meaning and forms of IP (1.2) is the commonest essay. Patentable inventions (1.6, often as problems), the procedure (1.7) and the patentee's rights and duties (1.9) are five-star; specification and infringement follow.

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

In short: Property is not only land and goods; the law also protects valuable intangible things. Intellectual property is property in creations of the mind, traditionally divided into industrial property (patents, trade marks, designs, geographical indications) and non-industrial or artistic property (copyright).

> **Previous Year Questions**
>
> - **[16M]** Explain the concept of property. Distinguish between industrial and non-industrial property. *(Mar 2024, Nov 2021)* ★★

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.

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

In short: Intellectual property rights are legal rights over creations of the mind — inventions, brand signs, creative works, designs and names linked to a place of origin. Each kind has its own statute in India and its own term and test of protection.

Previous Year Questions

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

Case Laws

- ***R.G. Anand v Delux Films (1978)***
  - **Facts:** R.G. Anand wrote a play on provincialism and narrated it to a film producer; the producer later made a film on the same theme, and Anand sued for infringement of his copyright.
  - **Held:** There is no copyright in an idea or theme, only in its expression; the film treated the idea quite differently, so there was no infringement.
  - **Why it matters here:** It marks the boundary of intellectual property — ideas stay free, expression is protected.
- ***Novartis AG v Union of India (2013)***
  - **Facts:** Novartis sought an Indian patent for the beta-crystalline form of imatinib mesylate, sold as the cancer drug Glivec; the application was opposed and refused, and the case reached the Supreme Court.
  - **Held:** The Court refused the patent under s.3(d) and stressed that a patent monopoly is granted for a genuine invention in the public interest, not as an absolute private right.
  - **Why it matters here:** It shows IP rights as limited bargains with the public.

---

3. Historical background, growth and economic/ labour justification of IPR; human creativity

In short: Intellectual property grew from royal grants of privilege into modern statutory rights. It is justified because creators deserve the fruit of their labour, because rewards encourage more creation and investment, and because protection in return for disclosure eventually enriches the public.

> **Previous Year Questions**
>
> - **[16M]** Trace the historical growth of IPR. Discuss the economic and labour justifications for protecting intellectual property. *(Jan 2026, Jul 2025, Apr 2022, Nov 2021, Mar 2021)* ★★★
> - **[8M]** Short note on the justification / human creativity behind IPR. *(Jun 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.

Case Laws

- ***Diamond v Chakrabarty (1980)***
  - **Facts:** A scientist working for General Electric genetically engineered a bacterium able to break down crude oil, and the US Patent Office refused to patent the bacterium itself because it was a living thing.
  - **Held:** The US Supreme Court held that a live, human-made micro-organism is a patentable "manufacture" or "composition of matter"; the line falls between products of nature and human inventions.
  - **Why it matters here:** It illustrates the incentive theory — protection follows human ingenuity into new fields.

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

In short: A patent is an exclusive right granted by the State to an inventor for a limited time, in return for disclosing the invention fully. The law aims to reward invention and spread technical knowledge, while keeping obvious or old ideas free for everyone.

> **Previous Year Questions**
>
> - **[16M]** Define patent. Explain its object and the principles underlying patent law. *(Aug 2024, Oct 2023, Nov 2022, Apr 2022, Nov 2021)* ★★★★

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.

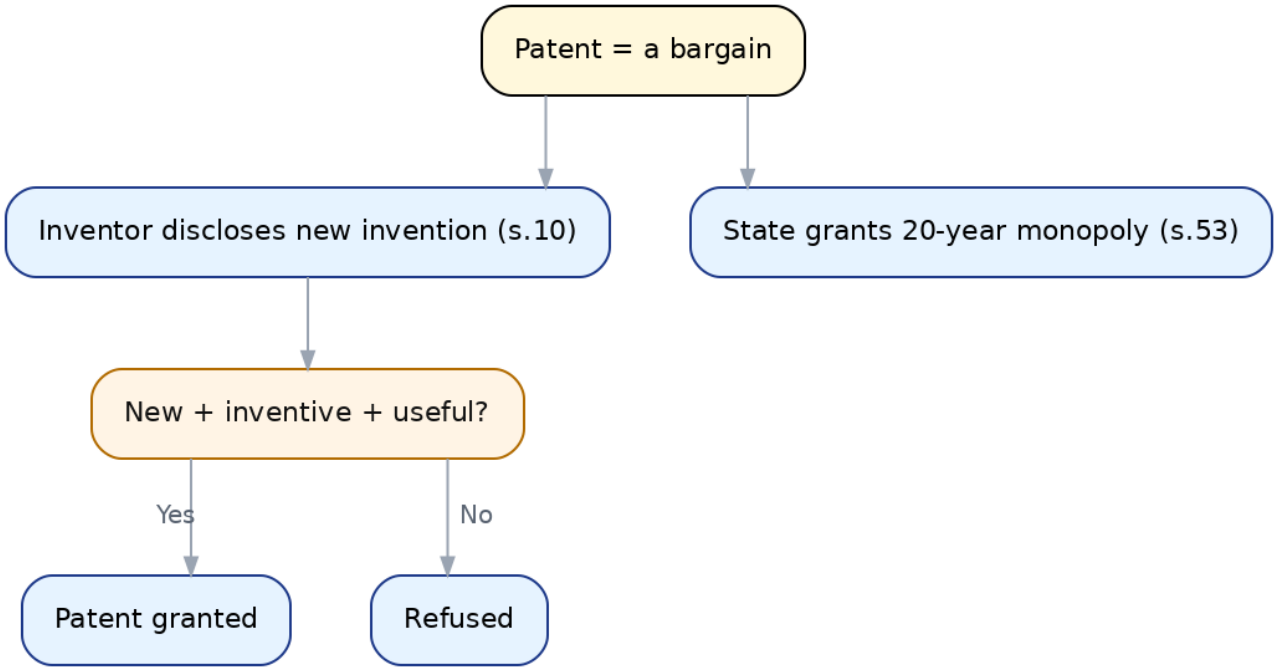
> ***Patents Act, 1970, s.2(1)(m):*** *"'patent' means a patent for any invention granted under this Act."*
>
> ***Patents Act, 1970, s.2(1)(j):*** *"'invention' means a new product or process involving an inventive step and capable of industrial application."*

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

The patent bargain and the test it passes are shown below.



The inventor discloses the invention; the State offers a twenty-year monopoly. The diamond is the test: only an invention that is new, inventive and capable of industrial use gets the grant.

Case Laws

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)***
  - **Facts:** Hindustan Metal Industries held a patent for a device and method of holding brass utensils steady on a lathe while they were turned and polished, and sued Bishwanath Prasad Radhey Shyam for infringement; the defendants counter-claimed that the patent was invalid. The trial judge revoked it, the High Court reversed, and the case reached the Supreme Court.
  - **Held:** The object of patent law is to encourage real invention; a patent is valid only if the invention is new and involves an inventive step not obvious to a skilled worker. This device and method were not, so the Supreme Court restored the revocation.
  - **Why it matters here:** It is the Supreme Court's statement of the principles behind patents.

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

In short: The Patents Act, 1970 is India's patent law. The 2005 amendment, made to meet India's TRIPS obligations, brought back product patents for food, medicines and chemicals, added strict limits such as s.3(d), and reshaped opposition and compulsory licensing.

> **Previous Year Questions**
>
> - **[16M]** Explain the scope and salient features of the Patents Act, 1970 with special reference to the 2005 amendment. *(Aug 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.

Case Laws

- ***Novartis AG v Union of India (2013)***
  - **Facts:** As in Topic 2, Novartis's application for the beta-crystalline form of imatinib mesylate was examined under the Act as amended in 2005.
  - **Held:** Section 3(d), added in 2005, denies a patent to a new form of a known substance unless it shows enhanced therapeutic efficacy; Novartis had not shown that.
  - **Why it matters here:** It shows the most important feature of the 2005 amendment at work.

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6. Patentable and non-patentable inventions

In short: An invention is patentable only if it is new, involves an inventive step that is not obvious, and is capable of industrial use. Even then, the Act lists things that are not inventions at all — for example mere discoveries, new forms of known substances without better efficacy, methods of treatment, and plants and animals.

Previous Year Questions

- **[16M]** What inventions are patentable and what are not patentable under the Patents Act, 1970? *(Jan 2026, Nov 2020)* ★★
- **[8M]** Short note on non-patentable inventions (s.3). *(Jul 2026, Jan 2026, Aug 2024, Mar 2023)* ★★★
- **[Problem]** Atomic-energy invention / method of surgery / antivirus software / fly-ash brick machine / pebble-levitation machine — is it patentable? *(Jan 2026, Mar 2023, Apr 2022, Nov 2021, Mar 2021)* ★★★★
- **[6M]** Biotech patenting. *(Jul 2026, Nov 2022, Jun 2019)* ★★

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.

Biotech patenting — how the Act treats living matter

Biotechnology inventions sit on the boundary between invention and nature, and the Act draws the line in three places:

1. **Discoveries are excluded.** The mere **discovery** of a living thing or non-living substance **occurring in nature** is not an invention (s.3(c)). Finding a new bacterium in the soil earns no patent.
2. **Plants, animals and biological processes are excluded. Plants and animals** in whole or any part, including seeds, varieties and species, and **essentially biological processes** for producing or propagating them, are not patentable (s.3(j)). Plant

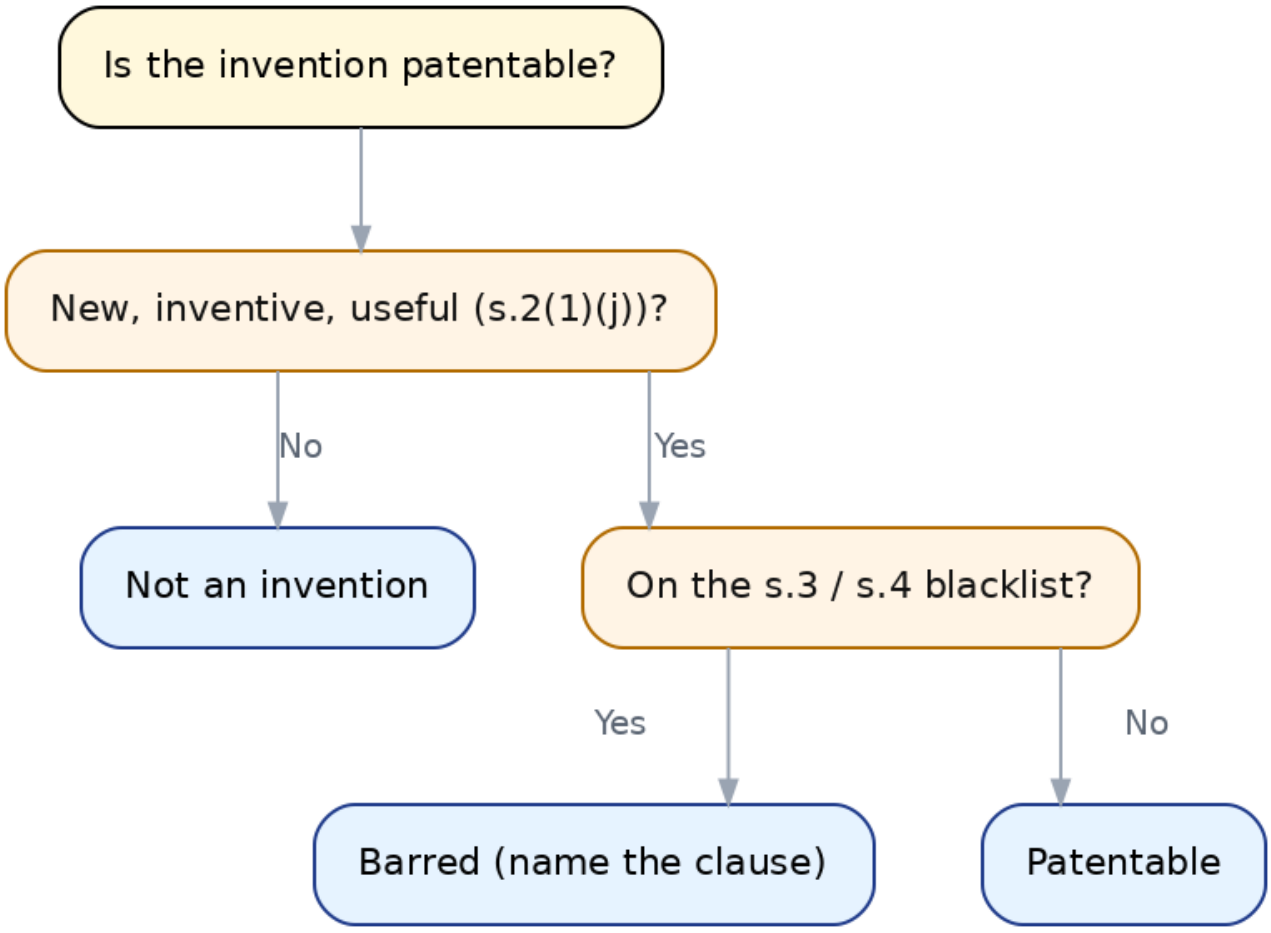
varieties are protected instead under a separate *sui generis* law, the Protection of Plant Varieties and Farmers' Rights Act, 2001.

3. **Micro-organisms and engineered processes are allowed. Micro-organisms** are expressly carved out of s.3(j). A genetically engineered micro-organism, or a technical process that uses one, can be patented if it is new, involves an inventive step and is capable of industrial application. *Diamond v Chakrabarty (1980)* is the classic authority: a man-made, oil-eating bacterium was held patentable because it was "a product of human ingenuity", not of nature.

In practice, a biotech applicant must show human intervention that creates something not found in nature, or a process that uses living material to a technical end. The bare organism as found in nature, and plants and animals as such, remain outside the patent system.

The Visual

Patentability is decided by two questions in order; follow the chart for any problem.



First ask whether the claim is an invention at all — new, inventive and industrially applicable. If not, stop. If it is, ask whether s.3 or s.4 excludes it; if so, name the clause. Only if both answers are favourable is it patentable.

Case Laws

- ***Novartis AG v Union of India (2013)***
  - **Facts:** Novartis claimed a new crystalline form of imatinib mesylate, a known substance, and relied on better flow, stability and absorption to show it was an advance.
  - **Held:** Under s.3(d) “efficacy” for a medicine means therapeutic efficacy; better physical properties or absorption alone were not enough, so the claimed form was not an invention.
  - **Why it matters here:** It is the leading case on s.3(d).
- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)***
  - **Facts:** As in Topic 4, the validity of a patent for a device and method of holding utensils on a lathe was challenged in an infringement suit.
  - **Held:** A mere workshop improvement that a skilled worker would arrive at is obvious and lacks inventive step; such a patent is invalid.
  - **Why it matters here:** It supplies the test of inventive step.
- ***Diamond v Chakrabarty (1980)***
  - **Facts:** As in Topic 3, the patentability of an oil-eating, genetically engineered bacterium was in question.
  - **Held:** A human-made micro-organism is patentable subject-matter.
  - **Why it matters here:** Compare s.3(j) of the Indian Act, which excludes plants and animals but not micro-organisms.

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

In short: A patent is applied for by the inventor or his assignee, with a specification. The application is published, examined on request, open to opposition, and then granted and entered in the register.

> **Previous Year Questions**
>
> - **[16M]** Explain the procedure for obtaining a patent under the Patents Act, 1970. Who may apply? *(Jan 2025, Mar 2024, Oct 2023, Mar 2023, Nov 2022)* ★★★★
> - **[Problem]** Employer patents an employee’s invention / student uses a teacher’s principle to invent / professor invents using university facilities — who owns the patent? *(Jul 2025, Jan 2025, Oct 2023, Nov 2022, Nov 2021)* ★★★

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.

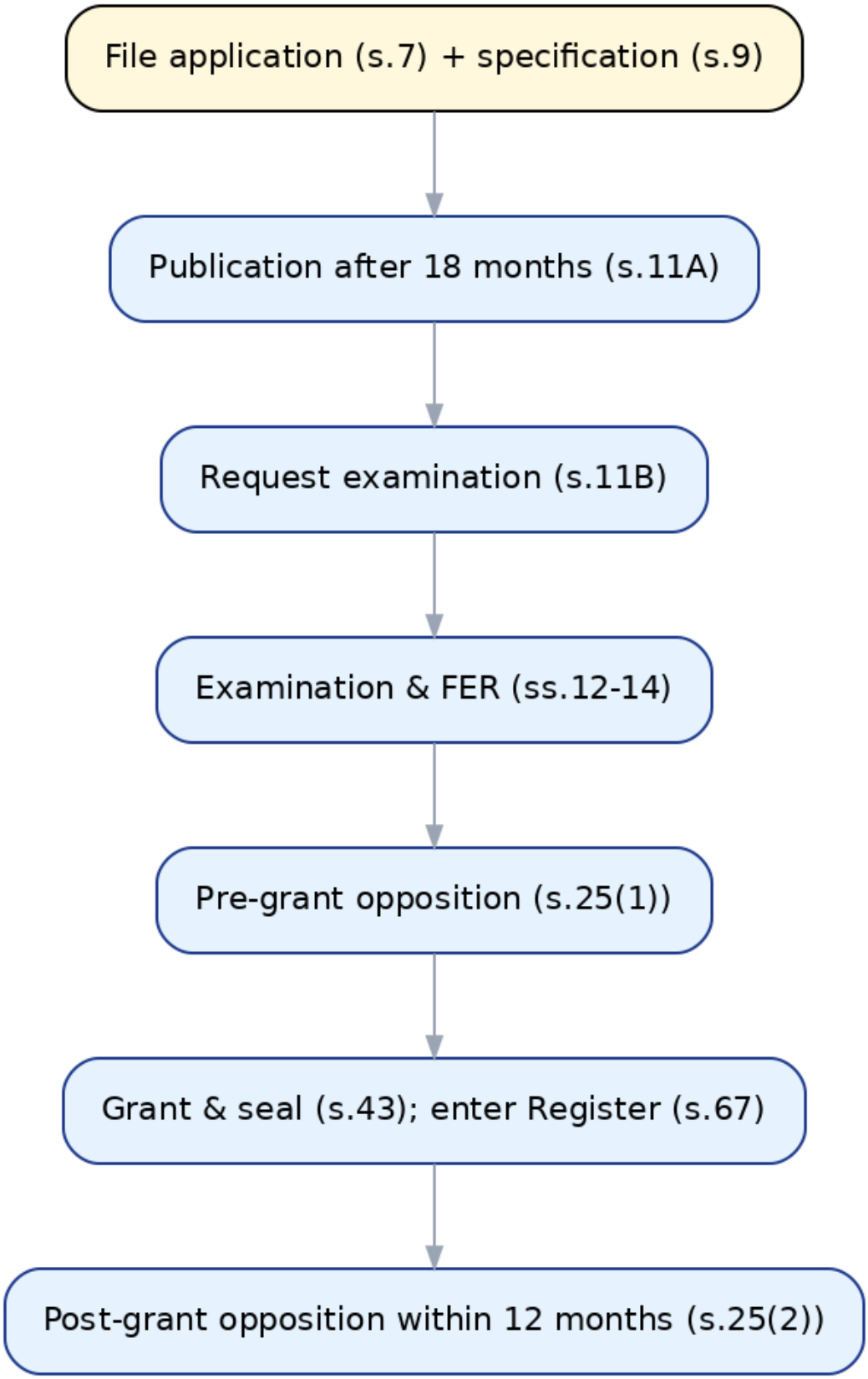
> ***Patents Act, 1970, s.6(1):*** *“an application for a patent for an invention may be made by any of the following persons... (a) by any person claiming to be the true and first inventor of the invention; (b) by any person being the assignee of the person claiming to be the true and first inventor...; (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

The steps from filing to grant run in a fixed order.



After filing, the application is published at eighteen months, examined on request, open to pre-grant opposition, and then granted and entered in the register — after which post-grant opposition is possible for twelve months.

8. Specification — provisional and complete

In short: A specification describes the invention. A provisional specification can be filed first to secure an early priority date; the complete specification, which must follow within twelve months, describes the invention fully and ends with claims that define exactly what the monopoly covers.

> **Previous Year Questions**
>
> - **[16M]** Distinguish between provisional and complete specification. *(Jul 2025, Jan 2025, Apr 2022, Mar 2021)* ★★★
> - **[8M]** Short note on specification / provisional specification. *(Jan 2026, Jan 2025, Oct 2023, Mar 2023, Apr 2022)* ★★★

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

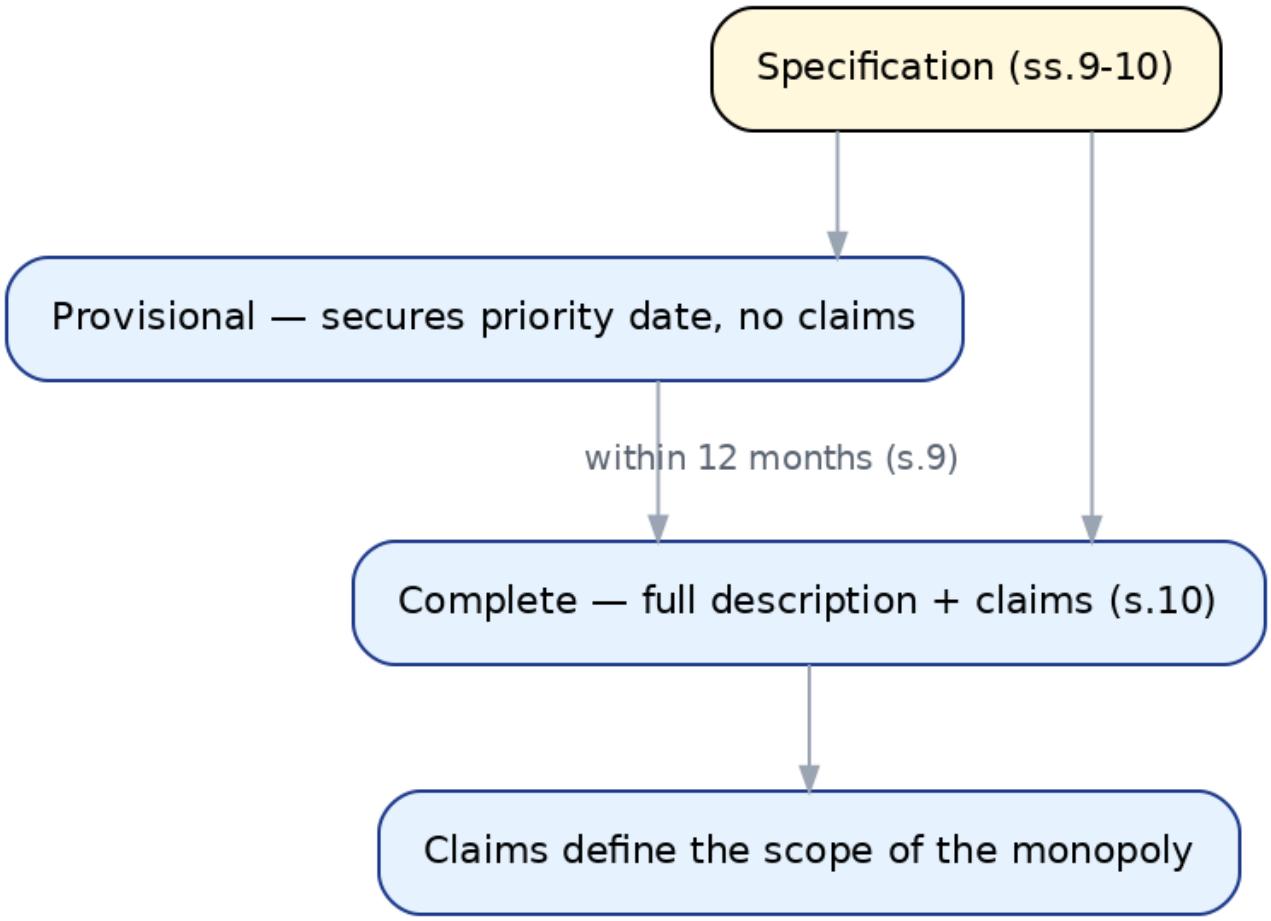
> ***Patents Act, 1970, s.9(1):*** *"Where an application for a patent... is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be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

The two kinds of specification connect through a twelve-month deadline.



A provisional specification secures the priority date without claims; within twelve months the complete specification must follow, with the full description and the claims that define the monopoly.

---

9. Rights and obligations of patentee

In short: A patentee has the exclusive right to make, use, sell and import the patented product or use the patented process, and to license or assign it. In return he must work the patent in India, pay renewal fees, and accept limits such as compulsory licences and government use.

> **Previous Year Questions**
>
> - **[16M]** Explain the rights and obligations / limitations of a patentee. *(Jan 2026, Jan 2025, Mar 2024, Mar 2023, Nov 2021)* ★★★★
> - **[8M]** Short note on the rights of a patentee. *(Nov 2022, Apr 2022, Mar 2021)* ★★

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)*.

Case Laws

- ***F. Hoffmann-La Roche Ltd. v Cipla Ltd. (2015)***
  - **Facts:** Roche held an Indian patent for erlotinib, a lung-cancer drug sold as Tarceva; Cipla launched a cheaper generic version, Roche sued for infringement, and Cipla challenged the patent's validity.
  - **Held:** The Delhi High Court (Division Bench) held the patent valid and infringed, reversing the single judge; the patentee's s.48 rights are enforced by reading the claims, and the defendant may attack validity by way of defence or counter-claim.
  - **Why it matters here:** It shows the patentee's right to exclude and how it is enforced.

---

10. Transfer of patent rights — assignment and licensing

In short: A patent can be transferred like other property. An assignment passes ownership; a licence only permits someone to use the invention while the patentee keeps it; both must be in writing and registered to be effective against others.

Previous Year Questions

- **[16M]** Explain the modes of transfer of patent rights — assignment and licensing. *(Jul 2026, Nov 2021)* ★★
- **[8M]** Short note on assignment of patents. *(Jun 2019)* ★
- **[Problem]** A co-owner assigns his share without the others' consent / company wants to licence to multiple firms — is it valid? *(Mar 2024, Nov 2022)* ★★

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 (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.

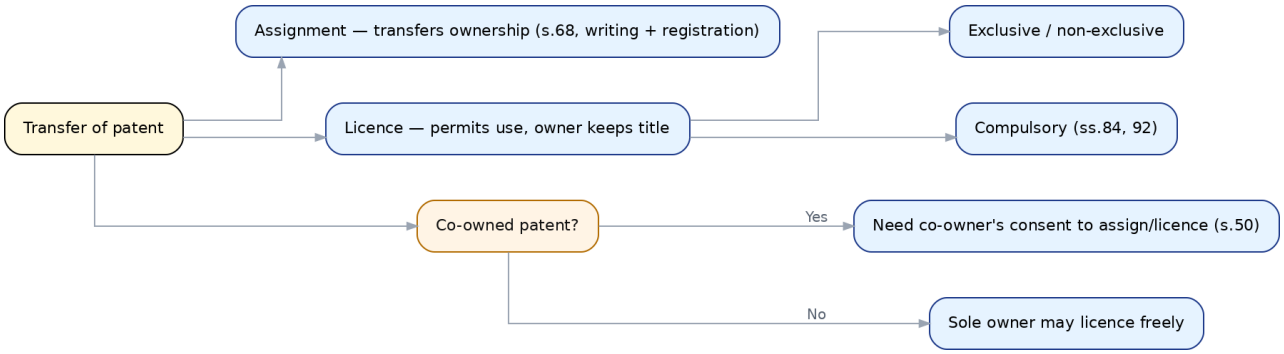
> ***Patents Act, 1970, s.68:*** *"An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying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

Transfer takes two forms, and co-ownership adds one extra question.



An assignment passes ownership; a licence, exclusive or not, only permits use, and compulsory licences sit beside voluntary ones. If the patent is co-owned, a co-owner needs the others' consent to assign or license; a sole owner may deal freely.

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11. Compulsory licences

In short: Three years after grant, any person interested may ask the Controller for a compulsory licence if the public's reasonable needs are not met, the invention is not available at an affordable price, or it is not worked in India. Special compulsory licences are also possible in emergencies and for exporting medicines.

> **Previous Year Questions**
>
> - **[8M]** Short note on compulsory licences. *(Aug 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)*.

Case Laws

- ***Bayer Corporation v Union of India (2014)***
  - **Facts:** Bayer's patented cancer drug sorafenib (Nexavar) cost about Rs. 2.8 lakh a month and was barely available in India. In 2012 the Controller granted Natco Pharma India's first compulsory licence, letting it sell the drug at about Rs. 8,800 a month on payment of royalty; Bayer's challenges failed before the Appellate Board and then in the Bombay High Court.

- **Held:** The s.84 grounds were made out — the public's reasonable requirements were not met, the price was not reasonably affordable, and the invention was not worked in India to an adequate extent.
- **Why it matters here:** It is the leading Indian authority on compulsory licences.

- ***BDR Pharmaceuticals v Bristol-Myers Squibb (2013)***
  - **Facts:** BDR applied for a compulsory licence for Bristol-Myers Squibb's patented cancer drug dasatinib without first making a credible attempt to obtain a voluntary licence.
  - **Held:** The Controller rejected the application: an applicant must show that he tried to get a licence from the patentee on reasonable terms before seeking a compulsory one.
  - **Why it matters here:** It shows the pre-condition in s.84(6)(iv).

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12. Government use / acquisition of patented inventions

In short: The Government may use a patented invention for its own purposes, and may even acquire the patent itself for a public purpose. The patentee is entitled to compensation.

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

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13. Revocation and surrender of patents

In short: A patentee may voluntarily surrender his patent. A patent can also be revoked on grounds such as lack of novelty or inventive step, wrong applicant, insufficient disclosure or false suggestion, by the High Court on a petition or counter-claim.

> **Previous Year Questions**
>
> - **[16M]** Explain the grounds for revocation of a patent. *(Jun 2019)* ★
> - **[8M]** Short note on revocation / surrender of patents. *(Mar 2024, Mar 2021)* ★★
> - **[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. *(Jun 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.

Case Laws

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)***
  - **Facts:** As in Topic 4, the defendants to an infringement suit counter-claimed for revocation of the patent.
  - **Held:** The patent was revoked for want of novelty and inventive step; the grant of a patent does not guarantee its validity.
  - **Why it matters here:** It shows revocation used as a counter-attack in an infringement suit.

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14. Infringement of patents and remedies

In short: Infringement is doing, without the patentee's consent, what only the patentee may do — making, using, selling or importing the invention as claimed. The patentee may sue for an injunction, damages or an account of profits, while the defendant may challenge the patent's validity or rely on statutory defences.

> **Previous Year Questions**
>
> - **[16M]** What acts constitute infringement of a patent? Discuss the remedies available. *(Jul 2026, Jan 2026, Aug 2024, Oct 2023, Apr 2022)* ★★★
> - **[8M]** Short note on remedies for patent infringement. *(Jul 2026, Mar 2024, Oct 2023)* ★★

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.

Case Laws

- ***F. Hoffmann-La Roche Ltd. v Cipla Ltd. (2015)***
  - **Facts:** As in Topic 9, Roche sued Cipla for selling a generic version of its patented drug erlotinib; Cipla argued its product fell outside the claims and that the patent was invalid.
  - **Held:** Infringement is decided by comparing the defendant's product with the patent's claims; read properly, the claims covered Cipla's product, so it infringed, and the validity challenge failed.
  - **Why it matters here:** It is the leading modern Indian infringement case.

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)***
  - **Facts:** As in Topic 4, the patentee's infringement suit was met with a counter-claim for revocation.
  - **Held:** The infringement claim failed because the patent itself was invalid; the grant of a patent does not guarantee its validity.
  - **Why it matters here:** Invalidity is the defendant's main defence (s.107).
- ***Bajaj Auto Ltd. v TVS Motor Co. Ltd. (2009)***
  - **Facts:** Bajaj, which held a patent for a twin-spark-plug engine technology, sued TVS over a new motorcycle engine, and the dispute went up and down the Madras High Court on interim relief.
  - **Held:** The Supreme Court directed that patent and trade-mark suits be heard day to day and decided quickly, rather than dragged out at the interim stage.
  - **Why it matters here:** It shows how infringement suits should be handled.

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15. Patent agent

In short: A patent agent is a registered professional who drafts specifications and handles patent applications and proceedings before the Patent Office. Only Indian citizens of 21 or more with a science, engineering or technology degree who pass the qualifying examination (or have served at least ten years as an examiner or Controller) may be registered and practise as patent agents.

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

16. Product patent and process patent

In short: A process patent protects only a particular method of making something, so a rival who uses a different method does not infringe. A product patent protects the product itself however it is made, which is why it gives stronger protection.

> **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.

Case Laws

- ***Novartis AG v Union of India (2013)***
  - **Facts:** As in Topic 2, Novartis's claim was a product claim to a form of a medicine — possible only because the 2005 amendment restored product patents for pharmaceuticals.
  - **Held:** Product patents for medicines are available, but subject to s.3(d).
  - **Why it matters here:** It shows the product-patent regime and its limit.

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17. Opposition proceedings to grant of patents

In short: Anyone may oppose a patent application after publication and before grant, and any person interested may oppose a granted patent within one year of its publication. Opposition lets the public point out that the claimed invention is old, obvious or not patentable.

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. *(Jul 2025, Mar 2023)* ★★

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.

Case Laws

- ***Novartis AG v Union of India (2013)***
  - **Facts:** Novartis's application was opposed before grant by generic manufacturers and the Cancer Patients Aid Association; the Controller refused it, and the refusal was upheld on appeal and in the Supreme Court.
  - **Held:** The patent was rightly refused under s.3(d).
  - **Why it matters here:** It shows pre-grant opposition at work.

---

18. Register of patents and Patent Office

In short: The Patent Office, under the Controller General, examines applications and grants patents. It keeps the Register of Patents, which records patents and every assignment, licence and change, and is open to public inspection.

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.

---

19. Offences and penalties under the Patents Act

In short: The Act still punishes breach of secrecy directions with imprisonment up to two years, or fine, or both (s.118). Since the Jan Vishwas Act, 2023 (in force 1 August 2024), falsely claiming that an article is patented (s.120), failing to give or giving false information (s.122) and practising as an unregistered patent agent (s.123) attract monetary penalties fixed by an adjudicating officer rather than criminal fines, and the old offence of misusing the words "patent office" (s.121) has been omitted.

> **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 exposes the trader to a heavy penalty. The Act’s penalty provisions guard the *integrity* of the patent label, separate from the civil suit for infringement.

The main offences and penalties

Until 2024 most of these provisions were criminal offences punished with fines. The **Jan Vishwas (Amendment of Provisions) Act, 2023**, in force from **1 August 2024**, decriminalised most of them. The position now is:

- **s.118 — contravention of secrecy provisions**: failing to comply with a secrecy direction under s.35 (inventions relevant to defence), or applying for a patent abroad in contravention of s.39 — still an offence, with imprisonment up to 2 years, or fine, or both (since 1 June 2026 the s.39 limb does not apply if the Central Government considers the invention was not relevant to defence or atomic energy).
- **s.120 — unauthorised claim of patent rights.** Falsely representing that an article is patented, or is the subject of a patent application in India — a **penalty** up to ₹10 lakh, plus ₹1,000 for every day the false claim continues.
- **s.122 — refusal or failure to supply information** to the Controller or Central Government — a **penalty** up to ₹1 lakh, plus ₹1,000 a day; for **false information**, a penalty of 0.5% of turnover or ₹5 crore, whichever is less.
- **s.123 — practising as a patent agent when not registered** — a **penalty** up to ₹5 lakh, plus ₹1,000 a day.
- These penalties are imposed by an **adjudicating officer** (s.124A), with an appeal (s. 124B).
- Failing to comply with the adjudicating officer’s or appellate authority’s order within ninety days is itself punishable with fine of ₹1 lakh or imprisonment up to one year, or both (s.124B(6)).
- **s.121** (wrongful use of the words “patent office”) has been **omitted**.

The point of these provisions 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 liable to penalty which may extend to ten lakh rupees, and in case of the*

> *continuing claim, a further penalty of one thousand rupees for every day after the first during which such claim continues."*

In Simple Terms: Beyond suing infringers, the Act penalises cheating *about* patents — falsely calling a product "patented" (s.120), withholding or falsifying information (s.122), or posing as a patent agent without registration (s.123). Since 2024 these are money penalties fixed by an adjudicating officer; breach of the secrecy provisions (s.118) remains a crime, and so does ignoring a penalty order (s.124B(6)).

> **◈ 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 makes a person liable to a penalty up to ₹10 lakh, plus ₹1,000 a day while the claim continues.
>
> **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 is liable to a penalty up to ₹10 lakh under s.120, imposed by the adjudicating officer, with a further daily penalty while the label stays.

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 device and method for holding utensils on a lathe during turning; a rival manufacturer, sued for infringement, 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 and penalties:** breach of secrecy (s.118) is still a crime; false “patented” claim (s.120), false or withheld information (s.122) and unregistered agents (s.123) are money penalties since the Jan Vishwas Act, 2023; s.121 omitted.

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.
Diamond v Chakrabarty (1980)	Patentable subject-matter	A man-made micro-organism can be patented.
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.



Intellectual Property Rights-I

KSLU LL.B. — Question Bank · Model Answers (Essays & Problems) · 100-mark pattern

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October 2026

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> ***Read this first, then go to your unit.*** *This companion to the study notes gives you a full, exam-ready* ***model answer*** *to every 16M essay theme, every 8-mark short note and every fact-pattern problem asked in past KSLU* ***Intellectual Property Rights–I*** *papers — grouped by unit and topic in the same order as the notes. The 8-mark short notes of the 100-mark paper are in §B of each unit; 6-mark short notes of the 80-mark paper are answered in the study-notes bundle.*
>
> ***Built for the 100-mark paper.*** *KSLU sets an* ***80-mark*** *and a* ***100-mark*** *paper; this bank is the* ***100-mark*** *edition (`IPR_I_Question_Bank_100.pdf`), which most students sit. Its essays are the 100-mark and both-pattern long questions, but its* ***problems (§C) cover every fact-pattern from both patterns*** *— problems repeat, so none is left out. Sitting the 80-mark paper? An 80-mark edition (adding the 80-only essays — Unit 3 e-commerce/e-signature, Unit 4 attributes of GI / TRIPS / Registrar) can be generated on request.*

How to Use This Question Bank

What this is. A rehearsal book. The study notes teach the concept; this bank shows you how to *write the marks* — a complete answer in the exact shape an examiner rewards.

The 3-step drill. (1) Read the question and try a 2-minute plan from memory.

1. Read the model answer; note the structure, the sections, the verdict. (3) For problems, re-do the IRAC in your own words under time.

Priorities. The ★ rating shows how often a question has been set — from ★★★★★ (twelve times or more) down to ★ (once). Start with the top tiers; the Priority Index below lists every block ranked.

House rules that win marks. Lead with a definition + roadmap; name the case **and** the year; cite the exact section (`s.3(i)`, `s.48`, `s.84`); for problems use the four IRAC headings and always give a definite verdict — spot the planted decoy (novelty never rescues a s.3-barred subject; a GI right is never sold, but on death it devolves on the successor in title).

Exam Pattern & Mark Weights

> ***100-mark paper*** *— five Units; each Unit carries a 16-mark essay and a problem/short question. Answer the required number from each Unit. Attempt the problems (§C) carefully — they recur almost verbatim across sittings.* ***80-mark paper*** *— five Units; one essay (10M) + one short-note / problem from each Unit. The 6-mark short notes are drilled in the notes bundle.*

Mark slot	What it is	Where it’s drilled
16M (100) / 10M (80)	Long essay	Section A of each unit
Problems	Fact-pattern, IRAC	Section C of each unit
8M short notes (100)	Short notes, 300–350 words	Section B of each unit
6M short notes (80)	Short explanatory notes	In the **study-notes** bundle

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Priority Index — Questions by Frequency

Every
block in the bank, grouped by how often its question has been set (counted from the *Asked:* lines). Start at the top.

★★★★★ — asked twelve times or more — master these first

Block	Marks	Question
`Q1.2`	16M	Define Intellectual Property. Explain its different forms / kinds / types
`Q1.7`	16M	Explain the procedure for obtaining a patent under the Patents Act, 1970. Who may apply?
`P2.1`	Prob	The plaintiff holds a registered trade mark (‘Mark A’); the defendant begins to use a…

Block	Marks	Question
`Q3.2`	16M	Explain the salient features, objectives and jurisdiction of the Information Technology…
`Q3.3`	16M	Define cyber crime. Explain its meaning, categories and classification
`Q4.2`	16M	Discuss the salient features and objects of the Geographical Indications of Goods…
`Q4.3`	16M	Explain the procedure for registration of a geographical indication. Who may apply? What…
`Q5.1`	16M	Explain the background and salient features of the Paris Convention. Discuss "national…
`Q5.4`	16M	Explain the background, organs, functions and role of the World Intellectual Property…

★★★★ — asked seven to eleven times

Block	Marks	Question
`Q1.4`	16M	Define patent. Explain its object and the principles underlying patent law
`Q1.9`	16M	Explain the rights and obligations / limitations of a patentee
`Q2.1`	16M	Define a trade mark. Explain its functions and essential features, and discuss the…

Block	Marks	Question
`Q2.3`	16M	Explain the procedure for registration of a trade mark and the effects of registration
`Q2.4`	16M	Discuss the absolute and relative grounds for refusal of registration of a trade mark
`P4.1`	Prob	An authorised user (‘X’) holding a right in a registered geographical indication dies. On…
`Q5.2`	16M	Explain the background, objectives and salient features of the Patent Cooperation Treaty
`Q5.3`	16M	Explain the salient features of the Madrid System for the international registration of…

★★★ — asked four to six times

Block	Marks	Question
`Q1.3`	16M	Trace the historical growth of IPR. Discuss the economic and labour justifications for…
`Q1.6`	16M	What inventions are patentable and what are not patentable under the Patents Act, 1970?
`Q1.8`	16M	Distinguish between provisional and complete specification
`Q1.14`	16M	What acts constitute infringement of a patent? Discuss the remedies available

Block	Marks	Question
S1.4	8M	Write a short note on: Specification (provisional and complete)
P1.1	Prob	An employee, after much effort in the laboratory, comes out with an invention; after the…
Q2.2	16M	Discuss the salient features of the Trade Marks Act, 1999, and trace its evolution
Q2.6	16M	What constitutes infringement of a registered trade mark? Discuss the remedies and defences
S2.4	8M	Write a short note on: Passing off
Q3.1	16M	What is Cyber Intellectual Property? Explain the protection of intellectual property in…
S3.4	8M	Write a short note on: E-commerce
P3.1	Prob	‘A’ is the proprietor of a well-known registered trade mark (‘TATA’ / ‘REDIFF’ / ’TRIDENT…
P4.3	Prob	Rama and Laxman are both authorised users registered for an identical or nearly…

★★ — asked two or three times

Block	Marks	Question
Q1.1	16M	Explain the concept of property. Distinguish between industrial and non-industrial property

Block	Marks	Question
`Q1.10`	16M	Explain the modes of transfer of patent rights — assignment and licensing
`S1.8`	8M	Write a short note on: Patent agent
`P1.2`	Prob	A physics teacher explains a principle in class. A student uses that principle to make a…
`P1.3`	Prob	A professor invents something in his spare time using the university’s infrastructure and…
`P1.4`	Prob	‘A’ comes up with an invention and dies before filing for a patent. ‘C’, ’A’s laboratory…
`P1.5`	Prob	‘X’ has an invention relating to atomic energy and wants to obtain a patent for it.…
`P1.6`	Prob	‘Z’ has invented an antivirus software and wants to obtain a patent for it. Advise.…
`P1.7`	Prob	A neurologist invents a method of curing epilepsy by delivering mild electric shocks to…
`P1.14`	Prob	A petitioner challenges s.126 of the Patents Act as unconstitutional, arguing it violates…
`Q2.7`	16M	Explain the tort of passing off and distinguish it from infringement
`S2.1`	8M	Write a short note on: Registrable and non-registrable trade marks

Block	Marks	Question
S2.3	8M	Write a short note on: Deceptive similarity
S2.7	8M	Write a short note on: Collective mark
S2.9	8M	Write a short note on: Trade libel
P2.2	Prob	‘X’, proprietor of a registered trade mark, brings a suit against ‘Z’ for infringement 15...
P2.4	Prob	A trader who has used a ‘clock’ device mark for 20 years claims his mark has become...
P2.5	Prob	A proprietor opens a shop selling meat products under the trade mark “Hubballi Chickens”...
P2.7	Prob	Company ‘A’, a well-established clothing manufacturer, has used the trade mark...
P2.9	Prob	A company assigns its trade mark (e.g. ‘MAAZA’) to another company "with all intellectual...
Q3.4	16M	Explain domain names, their registration and domain-name disputes
S3.2	8M	Write a short note on: Domain names
S3.3	8M	Write a short note on: Software piracy
P3.2	Prob	‘A’ (alternatively ‘X’) sends false information by e-mail to his friend merely to cause...

Block	Marks	Question
Q4.6	16M	Explain the offences and penalties under the Geographical Indications Act, 1999
Q4.8	16M	Distinguish between a geographical indication and a trade mark. Discuss the conflict…
P4.4	Prob	‘M’ (an individual) wants to register a geographical indication for a crop variety (or a…
P4.5	Prob	“Mysore Sandalwood Soap” is a registered geographical indication. A Mumbai-based company…
P4.6	Prob	The Tirupati Temple Trust (TTD) applies to register “Tirupati Laddu” as a GI…
S5.2	8M	Write a short note on: Patent Cooperation Treaty (PCT)

★ — asked once

Block	Marks	Question
Q1.5	16M	Explain the scope and salient features of the Patents Act, 1970, with special reference…
Q1.12	16M	Explain the provisions relating to use and acquisition of patented inventions by the…
Q1.13	16M	Explain the grounds for revocation of a patent. Distinguish revocation from surrender

Block	Marks	Question
S1.1	8M	Write a short note on: International character of Intellectual Property
S1.2	8M	Write a short note on: Intellectual Property and economic development
S1.3	8M	Write a short note on: Nature of patent rights
S1.5	8M	Write a short note on: Rights of a patentee
S1.6	8M	Write a short note on: Transfer of patent rights
S1.7	8M	Write a short note on: Revocation of patent
P1.8	Prob	‘X’ invents a machine capable of producing bricks from fly-ash; previously no method…
P1.9	Prob	‘Tech-illa’ claims he has invented a machine that, if used as directed, can suspend a…
P1.10	Prob	Company ‘M’ holds a patent for a novel medical device and wants to licence it to multiple…
P1.11	Prob	A co-owner of a patented article assigns his share in it to a third party without the…
P1.12	Prob	The Central Government uses a patented drug of a company at its public dispensaries…
P1.13	Prob	Anand obtains a patent in India for his invention in gene therapy. Around six months…

Block	Marks	Question
P1.15	Prob	X applies for a patent on 01/03/2022. Y opposes the application, saying he made the same…
P1.16	Prob	X is granted a patent for an invention he claims is an antidote for terminal cancers.…
Q2.5	16M	Explain “deceptively similar” marks and the tests for deciding the similarity of trade marks
S2.2	8M	Write a short note on: Effects of registration of trade mark
S2.5	8M	Write a short note on: Nature of goodwill
S2.6	8M	Write a short note on: Certification trade marks
S2.8	8M	Write a short note on: Well-known trade mark
P2.3	Prob	‘P’ has a registered trade mark ‘Specter’ for contact lenses. ‘D’ wants to use and…
P2.6	Prob	John seeks registration for his group of hotels under the name "President — India…
P2.8	Prob	The plaintiff holds the registered trade mark ‘Raymond’ for textile fabrics. The…
Q3.10	16M	Explain the constitution and jurisdiction of the Cyber Regulations Appellate Tribunal
S3.1	8M	Write a short note on: Cyber crimes

Block	Marks	Question
S3.5	8M	Write a short note on: Digital signature
P3.3	Prob	‘Q’ sends pornographic material to ‘P’ through e-mail. Decide the liabilities of ‘Q’…
P3.4	Prob	‘X’ has developed computer software and wants to obtain a patent for it. Advise him.…
S4.1	8M	Write a short note on: Geographical indications in India
P4.2	Prob	‘A’, an authorised user holding a right in a registered geographical indication, wants to…
P4.7	Prob	The plaintiff challenges a hotel’s use of the name ‘DARJEELING’ for its lounge, on the…
S5.1	8M	Write a short note on: Paris Convention
S5.3	8M	Write a short note on: World Intellectual Property Organisation (WIPO)

Year Index — Questions by Paper

The 100-mark papers of the last five years (2022–2026), newest first, with the blocks that answer their questions. Use it to rehearse a whole past paper.

Paper	Blocks
Jul 2026 (100)	Q1.2 · Q1.10 · Q1.14 · Q2.1 · S2.3 · S2.7 · S2.9 · P2.1 · Q3.1 · Q3.3 · Q4.8 · P4.5

Paper	Blocks
Jan 2026 (100)	`Q1.2` · `Q1.6` · `Q1.14` · `S1.4` · `P1.5` · `Q2.3` · `S2.3` · `S2.4` · `Q3.3` · `P3.3` · `Q4.3` · `P4.1` · `Q5.4`
Jul 2025 (100)	`Q1.2` · `Q1.3` · `Q1.7` · `Q1.8` · `S1.1` · `S1.3` · `P1.3` · `P1.16` · `Q2.4` · `Q2.5` · `S2.5` · `P2.6` · `Q3.2` · `Q4.2` · `Q5.4`
Jan 2025 (100)	`Q1.2` · `Q1.7` · `Q1.8` · `P1.3` · `Q2.3` · `S2.7` · `Q3.2` · `S3.2` · `P3.2` · `P3.4` · `Q4.2` · `S4.1` · `P4.4` · `Q5.1`
Aug 2024 (100)	`Q1.5` · `Q1.12` · `P1.4` · `Q2.4` · `Q2.7` · `S2.7` · `P2.1` · `P2.7` · `Q3.4` · `S3.3` · `P3.1` · `Q4.3` · `Q5.4` · `S5.2`
Mar 2024 (100)	`Q1.1` · `Q1.7` · `Q1.9` · `S1.7` · `P1.4` · `P1.10` · `Q2.3` · `S2.1` · `P2.7` · `S3.5` · `Q4.8` · `P4.5` · `Q5.3` · `Q5.4`
Oct 2023 (100)	`Q1.2` · `Q1.4` · `Q1.7` · `Q1.14` · `S1.4` · `P1.2` · `Q2.3` · `S2.6` · `P2.1` · `Q3.3` · `S3.4` · `P3.1` · `Q4.2` · `Q5.4`
Mar 2023 (100)	`Q1.2` · `Q1.7` · `Q1.9` · `S1.4` · `P1.2` · `P1.15` · `Q2.3` · `S2.2` · `P2.1` · `Q3.2` · `S3.4` · `Q4.3` · `P4.2` · `Q5.4`
Nov 2022 (100)	`Q1.2` · `Q1.6` · `Q1.7` · `P1.7` · `P1.11` · `Q2.6` · `S2.4` · `Q3.2` · `Q3.3` · `S3.1` · `P3.1` · `Q4.6` · `P4.1` · `P4.3` · `Q5.2` · `Q5.4` · `S5.3`
Apr 2022 (100)	`Q1.2` · `Q1.4` · `Q1.6` · `Q1.14` · `S1.4` · `P1.7` · `Q2.1` · `Q3.3` · `S3.4` · `P3.1` · `Q4.3` · `P4.1` · `P4.3` · `Q5.4` · `S5.1`

> ***This bank is built for the 100-mark paper.*** *Its* ***essays*** *(§A) are the long questions asked on the KSLU Intellectual Property Rights–I 100-mark and both-pattern sittings; its* ***problems*** *(§C) cover* ***every*** *fact-pattern from both the 80- and 100-mark papers; its* ***short notes*** *(§B) answer every 8-mark short note of the 100-mark paper. Every unit follows the notes' topic order. The 6-mark short notes of the 80-mark paper are in the study-notes bundle.*

UNIT 1 — Introductory Aspects of IP & Patents

A. Essay Questions (16M) — Model Answers

Q1.1 — `[16M]` Explain the concept of property. Distinguish between industrial and non-industrial property.

Asked: Nov 2021 (80), Mar 2024 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 1 (Concept of property; industrial and non-industrial property)

▤ ***ANSWER OUTLINE***

1. Property = a bundle of rights, not the thing.

2. Tangible vs intangible; IP is the leading intangible.

3. Industrial vs non-industrial (artistic) property — the Paris split.

4. The tell: industrial = commercial + registered; artistic = copyright + automatic.

5. Conclusion — where IP sits in the map of property.

Introduction

Property in law is not the object owned but the **bundle of rights** the law recognises over a resource — the right to use it, to enjoy its fruits, to exclude others, and to transfer it. The owner of a house may live in it, let it, keep trespassers out and sell it; those four rights constitute the ownership. Property is classified as tangible and intangible, and intellectual property is further divided into **industrial** and **non-industrial** property.

A. What “property” really means

1. **A bundle of rights, not a thing.** In popular usage property means a physical object. In law, property is the set of legally protected rights a person has over a resource. What is owned is the *right*, not merely the object.
2. **The four incidents.** The rights bundled together are use, enjoyment of fruits, exclusion of others, and transfer/disposal. Intellectual property carries exactly these — the patentee may use the invention, licence it for royalties, exclude infringers and assign it.
3. **John Locke’s foundation.** Locke wrote in 1689 that “the labour of his body and the work of his hands are properly his.” That labour-desert idea, first framed for land and cattle, is now used to justify a patent on a molecule and a trade mark on a drink.

B. Tangible and intangible property

Property first splits by whether it has a physical body. **Tangible** property consists of movable and immovable things having a physical existence — land, goods, money. **Intangible** property is a right that has value but no physical form — a debt, shares, and intellectual property. Intellectual property is the leading example of intangible property: what is owned is the invention or the brand itself, not any physical copy of it. A person may own a printed book (a thing) without owning the copyright in it. Because intangible property cannot be physically possessed, it exists only by force of law: its protection depends entirely on statute, which is why each form of intellectual property is governed by its own Act and enforced through remedies that the Act itself provides.

C. Industrial versus non-industrial property

This division derives from the **Paris Convention, 1883**.

1. **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 statute-family in India is the Patents Act 1970, Trade Marks Act 1999, Designs Act 2000 and GI Act 1999. It is **commercial** and mostly **registered**.
2. **Non-industrial property** — usually called literary and artistic property — is essentially **copyright**: books, music, films, paintings and software, governed by the Copyright Act, 1957. It protects *expression*, not commerce-linked signs, and it arises **automatically** on creation without registration.

The line is not watertight — software and industrial designs sit near the border — but in essence industrial property is commercial and registered; artistic property is creative and automatic.

D. Why the classification matters

1. **Different Acts, different tests.** The classification decides which statute governs and what the owner must prove. Industrial property must generally be *registered* to be protected, and registration follows a test — novelty for patents, distinctiveness for marks. Copyright, by contrast, needs no registration and vests the moment the work is created and fixed in a material form.
2. **Different terms.** Industrial rights are short and functional (a patent 20 years, a registered design 10 + 5), because the law wants the invention or design to enter the public domain quickly. Copyright lasts far longer (life of the author plus 60 years), reflecting its personal, authorial character.
3. **Different owners.** Industrial property is usually held by a trader or firm and is freely assignable; a geographical indication, though industrial, is held by a *community* of producers and cannot be assigned. This shows that the property “bundle” is shaped differently for each kind of IP even within the industrial family.

Leading cases

- ***Diamond v Chakrabarty (1980)*** — property expands to fit new creations; even a man-made micro-organism can be owned as property.

Conclusion

Property is the bundle of rights over a resource, and it divides first into tangible and intangible, then — for intellectual creations — into **industrial** property (patents, marks, designs, GI: commercial and registered) and **non-industrial** property (copyright: artistic and automatic). Intellectual property is the principal modern form of intangible property, and each intellectual property right is a defined share of that bundle.

Q1.2 — `[16M]` Define Intellectual Property. Explain its different forms / kinds / types.

> *Asked: Jul 2026 (80), Jul 2026 (100), Jan 2026 (100), Jul 2025 (100), Jan 2025 (100) · +12 earlier · Pattern: both · ★★★★★ · Notes: Unit 1 → Topic 2 (Meaning, nature and forms/kinds of IP)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Define IP — property in creations of the mind.*
>
> *2. Four nature-features: intangible, territorial, time-limited, statutory.*
>
> *3. The five core kinds, each with what it protects + its Act.*
>
> *4. Trade secrets and plant varieties — a line each.*
>
> *5. Conclusion — classify by what is protected.*

Introduction

Intellectual property (IP) is **property in creations of the human mind** — inventions, brand names, artistic works, designs and origin-linked names. Unlike tangible property, IP cannot be physically possessed or fenced; an idea can only be copied. The law therefore protects it by granting the creator an exclusive right for a limited time. IP is intangible, territorial, time-limited and statutory, and it takes several distinct forms.

A. The nature of IP — four defining features

1. **Intangible / incorporeal.** What is owned is the idea, sign or expression, not the physical object carrying it. A person may own a book without owning the copyright in it.
2. **Territorial.** An Indian patent protects only in India; protection stops at the border unless an international convention extends it (Unit 5).
3. **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].

4. **A creature of statute.** Each right is defined and granted by its own Act, not by general common law.

B. The forms / kinds of IP

There are **five core kinds** of intellectual property.

1. **Patent** — protects a new, useful and non-obvious **invention** (a product or process). Governed by the **Patents Act, 1970**; term 20 years. Example: a new drug molecule.
2. **Trade mark** — protects a **sign that identifies the source** of goods or services (word, logo, shape). Governed by the **Trade Marks Act, 1999**; term 10 years, renewable indefinitely. Example: the "Nike" swoosh.
3. **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. It arises **automatically**, no registration needed.
4. **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.
5. **Geographical indication (GI)** — protects a **name that links a good to a place** whose qualities or reputation come from that origin. Governed by the **GI Act, 1999**; term 10 years, renewable. Example: "Darjeeling" tea. It is owned by a *community*, not one trader.

Other forms include **trade secrets / confidential information**, protected by contract and equity with no registration (the Coca-Cola formula); and **plant varieties and layout-designs of integrated circuits**, each with its own special Act.

C. The WIPO definition

The **WIPO Convention, 1967 (Art. 2(viii))** lists IP as the rights relating to literary, artistic and scientific works, inventions, industrial designs, trade marks and service marks, and protection against unfair competition — the authoritative "boxes" into which every creation is sorted.

D. One product, many rights

The kinds of IP are not rivals; a single commercial product can carry several at once, each protecting a different aspect. In a new smartphone, its novel battery is protected by a **patent**, its name and logo by a **trade mark**, its distinctive curved body by an **industrial design**, and its pre-loaded music and software by **copyright**. IP is thus classified by *what* is protected (the invention, the sign, the expression, the look, the origin), not by the product that carries it. It also explains why the five Acts stand side by side rather than overlapping: each answers a different question about the same object.

Leading cases

- ***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)*** — IP monopolies are **bargains** granted in the public interest, not absolute private rights.

Conclusion

Intellectual property is the exclusive right the law grants over a creation of the mind — intangible, territorial, time-limited and statutory. It takes five principal forms — patent, trade mark, copyright, design and geographical indication — each protecting a different thing under its own Act. A single product (a smartphone) may carry all of them at once, and IP is therefore classified by *what* is protected, not by the product.

Q1.3 — `[16M]` Trace the historical growth of IPR. Discuss the economic and labour justifications for protecting intellectual property.

> *Asked: Jan 2026 (80), Jul 2025 (100), Apr 2022 (80), Nov 2021 (100), Mar 2021 (100) · +1 earlier · Pattern: both · ★★★ · Notes: Unit 1 → Topic 3 (Historical background, growth and justification of IPR)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *Growth in four stages: Venice 1474 → Statute of Monopolies 1624 → Paris/Berne → TRIPS 1994.*
> 2. *Indian line: 1856 → 1970 Act → 2005 amendment.*
> 3. *Labour (Locke) and reward/incentive justifications.*
> 4. *Economic/utilitarian and disclosure justifications.*
> 5. *Conclusion — protection makes costly innovation happen.*

Introduction

The story of intellectual property is the story of one bargain repeated across five centuries: give the creator a **limited monopoly** in exchange for public **disclosure**, so that more is invented and shared. IPR developed through distinct historical stages, and it rests on four classic justifications — labour, reward, economic and disclosure.

A. How IPR grew — the stages

1. **Guild and privilege era (medieval–1600s).** Monopolies began as royal favours. **Venice (1474)** passed the world's first patent statute, promising ten years' protection to "any new and ingenious device." England's **Statute of Monopolies, 1624** abolished arbitrary royal monopolies but preserved patents for "new manufactures" — the ancestor of modern patent law.

2. **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.
3. **Internationalisation (late 1800s).** Because rights stopped at borders, nations cooperated through the **Paris Convention, 1883** (industrial property) and the **Berne Convention, 1886** (copyright).
4. **The TRIPS era (1994–).** The **TRIPS Agreement, 1994**, under the WTO, made minimum IP standards a condition of world trade and forced India to overhaul its laws.

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

B. The labour and reward justifications

1. **Natural-rights / labour theory (Locke).** A person owns the fruit of his labour; one who mixes mental labour with the world by inventing or writing owns the result by natural right. This is the **labour justification** of IPR.
2. **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.

C. The economic and disclosure justifications

1. **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. If a firm spends ₹500 crore on a medicine that a rival can copy for ₹5, only a patent makes the investment rational.
2. **Disclosure / public-benefit theory.** In exchange for protection the creator must **publish** the invention. Society gets the knowledge at once and free use after the term expires — the whole point of the patent bargain. **Human creativity** is the thread through all four theories: people create more when creativity is rewarded, and a knowledge economy runs on protected ideas. As Lincoln put it in 1859, "the patent system added the fuel of interest to the fire of genius."

D. The two justifications weighed together

The labour and economic justifications are two sides of one coin. The **labour theory** answers *why the creator deserves* the reward — he mixed his effort with the world and should reap what he sowed. The **economic theory** answers *why society should grant* it — knowledge is a public good, cheaply copied and hard to sell, so without a temporary monopoly the market under-produces innovation. Neither is absolute: as *Novartis (2013)* shows, the monopoly is a means to an end, and where it starts to deny the public affordable access (to medicine, for example), the law re-balances it through devices such as compulsory licensing. The modern justification is therefore **instrumental** — IP is

protected not because ideas are sacred but because protecting them, for a limited time, produces more creativity and disclosure than leaving them free.

Leading cases

- ***Diamond v Chakrabarty (1980)*** — patents **encourage investment** in research; the incentive rationale in action.
- ***Novartis AG v Union of India (2013)*** — the incentive is **instrumental, not absolute**; it must be balanced against public access to medicine.

Conclusion

IPR grew from the isolated privileges of Venice and the Statute of Monopolies into a global regime under Paris, Berne and finally TRIPS. It is justified because ideas, left unprotected, are copied for free and creators earn nothing — so labour theory says the creator deserves the fruit, reward theory says protection spurs more creation, economic theory says it corrects a market failure, and disclosure theory says the public gains the knowledge. Together they explain why the temporary monopoly is the mechanism that makes expensive innovation happen at all.

Q1.4 — `[16M]` Define patent. Explain its object and the principles underlying patent law.

> *Asked: Aug 2024 (80), Oct 2023 (100), Nov 2022 (80), Apr 2022 (100), Nov 2021 (80) · +2 earlier · Pattern: both · ★★★★ · Notes: Unit 1 → Topic 4 (Meaning, definition and object of patent; principles)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Define patent — 20-year monopoly for disclosure (s.2(1)(m)).*
>
> *2. The quid pro quo bargain.*
>
> *3. Three essentials: novelty, inventive step, industrial application.*
>
> *4. Object (encourage + disclose + balance) and underlying principles.*
>
> *5. Bishwanath Prasad — object of patent law.*

Introduction

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**). Under **s.2(1)(m)** a patent is "a patent for any invention granted under this Act," and under **s.2(1)(j)** an "invention" is a new product or process involving an inventive step and capable of industrial application. The whole of patent law rests on this bargain of monopoly for disclosure.

A. The quid pro quo

The central 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 free use of it after 20 years. A patent is **not** a reward for keeping a secret — it is a reward for **disclosure**. An inventor who refuses to reveal how the machine works fails the bargain and should seek trade-secret protection instead; without disclosure there is nothing for the public to receive when the term ends.

B. The three essentials of a patentable invention

1. **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").
2. **Inventive step.** It must be **non-obvious** to a person skilled in the art — a feature involving technical advance or economic significance (**s.2(1)(ja)**).
3. **Industrial application / utility.** It must be **capable of being made or used** in an industry (**s.2(1)(ac)**). Miss any one and there is no invention to patent.

C. The object of patent law

The object is threefold: (1) to **encourage invention** by rewarding inventors; (2) to **secure disclosure** so that knowledge enters the public store; and (3) to **balance** the private monopoly against the public interest in access and competition. In **Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)** the Supreme Court said the object is to encourage scientific research and industrial progress — and that a patent is not granted for an obvious workshop improvement.

D. The principles underlying patent law

1. **True-and-first-inventor / first-to-file.** The right goes to the one who invents and files first (**s.6**).
2. **Monopoly for a limited term.** Never perpetual — 20 years, then the public domain.
3. **Disclosure in return for protection.** A full description and claims (**s.10**) are the price of the grant.
4. **Public-interest override.** Compulsory licensing (**s.84**), government use (**ss.100–102**) and the **s.3** exclusions keep the monopoly in check.
5. **Territoriality.** An Indian patent binds only within India.

E. How the principles fit together

These principles are not a random list; they interlock to keep the bargain honest. The **true-and-first-inventor** rule ensures the monopoly goes to the person who actually contributed the knowledge, not a mere importer or financier. The **limited term** ensures the public is not permanently taxed for the invention — after 20 years anyone may use it freely. **Disclosure** is what the public receives *now*, so a patent obtained while suppressing the real method is defective. And the **public-interest override** — compulsory licensing, government use and the s.3 exclusions — is the safety valve that stops the monopoly from

harming the very public it was meant to serve, as when a life-saving drug is priced out of reach. The word “patent” itself, from *litterae patentes* [open letters], captures the idea: it is a *public* document announcing that this invention now belongs, for a while, to this inventor — open for all to read precisely because disclosure is the price of protection.

Leading cases

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — the object of a patent is to **encourage research and industry**; no patent 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.

Conclusion

A patent is a 20-year “keep-off” right over a genuinely new, inventive and useful invention, granted only because the inventor agrees to tell the world how it works. Its object is to encourage invention, secure disclosure and balance monopoly against public interest, and it rests on the principles of true-and-first-inventor, limited term, disclosure, public-interest override and territoriality. Thus, a patent is a limited monopoly granted for a new, inventive and useful invention in return for its disclosure.

Q1.5 — `[16M]` Explain the scope and salient features of the Patents Act, 1970, with special reference to the 2005 amendment.

> *Asked: Aug 2024 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 5 (Scope and salient features of the Patents Act, 1970)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *The 1970 Act as India’s complete patent code.*
> 2. *Salient features — definition, exclusions, 20-year term, disclosure, opposition, safety valves.*
> 3. *The 2005 amendment — product patents (s.5 deleted).*
> 4. *s.3(d) anti-evergreening; refined opposition and compulsory licence.*
> 5. *Novartis (2013); Natco v Bayer (2012).*

Introduction

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 the TRIPS Agreement. Until 1 January 2005 India granted no patents on

medicines or food, only on the *process* of making them, which kept Indian generic drugs among the cheapest on earth. The 2005 amendment introduced product patents and thereby transformed the pharmaceutical sector.

A. Scope and salient features

1. **Definition-driven.** "Invention" (**s.2(1)(j)**) requires novelty, inventive step and industrial application; the whole Act turns on that definition.
2. **A list of non-inventions. Sections 3 and 4** exclude a long list from patentability — methods of treatment, computer programmes per se, atomic energy and more.
3. **A 20-year uniform term. Section 53** fixes a single term of 20 years from the filing date for all patents.
4. **Complete disclosure.** The complete specification with claims (**s.10**) is the price of the monopoly.
5. **Opposition mechanism.** Pre-grant and post-grant opposition under **s.25** let outsiders challenge a patent at the gate.
6. **Public-interest safety valves.** Compulsory licensing (**ss.84, 92**) and government use (**ss.99–103**) keep the monopoly in check.
7. **Administration.** The Patent Office and Controller grant patents and maintain the Register (**s.67**).

B. The 2005 amendment — the headline points

1. **Product patents introduced.** Before 2005, **s.5** allowed *only process patents* for food, medicine and chemicals — deliberately, to keep medicines cheap. The 2005 amendment **deleted s.5**, so now the *product itself* — a new molecule — can be patented, not just the method of making it. This is the most important feature of the amendment.
2. **s.3(d) strengthened to block "evergreening".** A new *form* of a known substance is patentable only if it shows enhanced **therapeutic efficacy** — the rule applied in *Novartis (2013)* to refuse a new salt form of a known drug.
3. **Opposition refined.** Post-grant opposition was introduced and pre-grant opposition refined under **s.25**.
4. **Compulsory-licence machinery aligned with TRIPS flexibilities**, later used in *Natco v Bayer (2012)*.

Reinforcing the term, **s.53(1)** provides that "the term of every patent granted… shall be twenty years from the date of filing."

C. Why the product-patent shift mattered

The move from process-only to product patents is the most significant change made by the amendment. A **process patent** protects only the *method* of making a product, so a rival who reaches the same molecule by a different route does not infringe; a **product patent** protects the *product itself, however made*, so any rival making it infringes

whatever route he uses. Before 2005, an Indian firm could lawfully make a patented foreign medicine by an alternative process and sell it cheaply — which is how India became "the pharmacy of the world." After 2005, the molecule itself could be patented, closing that route. To soften the impact, Parliament paired the change with **s.3(d)** (no fresh monopoly for a trivial new form of a known drug) and with strong **compulsory-licence** powers, so that a patentee who overprices or fails to work a medicine can be compelled to licence it — the balance struck in *Natco v Bayer (2012)*.

D. The scope of the Act

The scope of the 1970 Act is comprehensive: it defines what an invention is, lists what cannot be patented, prescribes who may apply and how, fixes the term and renewal, provides for opposition and revocation, regulates assignment and licensing, and creates the
public-interest machinery of compulsory licensing and government use. It is, in short, a **complete code** for patents in India, and no patent right exists outside it.

Leading cases

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

Conclusion

The Patents Act, 1970 is India's patent rulebook — definition-driven, with a list of exclusions, a uniform 20-year term, mandatory disclosure, an opposition mechanism and public-interest safety valves. Its 2005 amendment's decisive move was to allow patents on **products** (a drug molecule itself), not just on the process of making them, while inserting **s.3(d)** to stop trivial new forms from grabbing fresh monopolies. The product-patent regime, tempered by s.3(d), is the defining feature of the amended Act.

Q1.6 — `[16M]` What inventions are patentable and what are not patentable under the Patents Act, 1970?

> *Asked: Jul 2026 (80), Jan 2026 (100), Nov 2022 (100), Apr 2022 (100), Nov 2020 (100) · +1 earlier · Pattern: both · ★★★ · Notes: Unit 1 → Topic 6 (Patentable and non-patentable inventions)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Two-step test — positive (s.2(1)(j)) then negative list (ss.3–4).*
>
> *2. The three positive tests.*
>
> *3. The s.3 blacklist — name the clause letters.*

4. s.3(i) treatment, s.3(k) software, s.4 atomic energy; s.3(d) evergreening.

5. Novartis; conclusion.

Introduction

An invention can be brilliant and still be barred from a patent — because **s.3** says so. 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**. Patentability therefore depends on both tests, and an excluded invention is identified by the precise clause of s.3 or s.4 that bars it.

A. The positive tests

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

1. **Novelty** — new, not anticipated by prior publication or use anywhere in the world before the priority date.
2. **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)**).
3. **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:

1. **s.3(a)** — frivolous inventions, or those contrary to well-established natural laws (a perpetual-motion or anti-gravity machine).
2. **s.3(b)** — inventions contrary to public order or morality, or seriously prejudicial to human, animal or plant life or the environment.
3. **s.3(c)** — a mere **discovery** of a scientific principle or an abstract theory, or discovery of a living or non-living substance occurring in nature.
4. **s.3(d)** — a mere new **form** of a known substance without enhancement of known efficacy; a mere new use of a known substance (the anti-evergreening clause — *Novartis*).
5. **s.3(e)** — a substance obtained by mere admixture (only aggregating known properties).
6. **s.3(f)** — mere arrangement or re-arrangement of known devices each working independently.
7. **s.3(i)** — any **method of medicinal, surgical, curative or other treatment** of human beings or animals; it bars, for example, a method of curing epilepsy or a new process of limb surgery.
8. **s.3(k)** — a mathematical or business method, a **computer programme per se**, or algorithms; antivirus software claimed as such falls within this bar.

9. **s.3(j), (m), (n), (p)** — plants and animals and essentially biological processes; a mere scheme or method of performing a mental act or playing a game; a mere presentation of information; and traditional knowledge.

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). Such an invention is not patentable, however novel or useful it may be.

The statutory words themselves make the point: **s.3(i)** excludes "any process for the medicinal, surgical, curative… or other treatment of human beings," and **s.3(k)** excludes "a computer programme per se or algorithms."

D. Application of the exclusions

1. **Method of treatment (s.3(i)).** A cure for epilepsy or a process for limb surgery is a method of treatment and is barred — but a novel *device* used to deliver it can still be patented. The bar is on the *method*, not the apparatus.
2. **Software (s.3(k)).** Antivirus software is a computer programme *per se* and is barred; its route to protection is **copyright**, not a patent, unless it produces a genuine technical effect in novel hardware.
3. **Contrary to natural law (s.3(a)).** A machine that claims to levitate an object against gravity is barred as contrary to well-established natural laws, however "revolutionary" it sounds.
4. **A genuine machine that works.** By contrast, a machine that for the first time makes useful bricks from fly-ash *passes* the test — it is novel, inventive and industrially applicable and falls under no exclusion. The lesson is that novelty never rescues a barred subject-matter, but a real working advance in an un-barred field is patentable.

Leading cases

- ***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 (s.3(j) excludes plants and animals, but not micro-organisms).

Conclusion

Patentability is a two-step gate: first the invention must be new, inventive and useful under **s.2(1)(j)**; then it must survive the **s.3** blacklist and **s.4**. Many clever inventions — a cure (s.3(i)), software as such (s.3(k)), an atomic-energy device (s.4), a new form of a known drug (s.3(d)) — are refused not because they are bad but because the law has fenced them off. Each exclusion operates through a precise clause of s.3 or s.4.

Q1.7 — [16M] Explain the procedure for obtaining a patent under the Patents Act, 1970. Who may apply?

> *Asked: Jul 2025 (100), Jan 2025 (100), Mar 2024 (100), Oct 2023 (100), Oct 2023 (80) · +7 earlier · Pattern: both · ★★★★★ · Notes: Unit 1 → Topic 7 (Procedure to obtain a patent; who may apply)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Who may apply — s.6 (true and first inventor, assignee, legal representative).*
>
> *2. Meaning of "true and first inventor" (s.2(1)(y)).*
>
> *3. The step chain: file → specification → publish → request exam → oppose → grant.*
>
> *4. Term 20 years (s.53).*
>
> *5. Financier is not the inventor; conclusion.*

Introduction

Every patent procedure begins with one question — *who is the true and first inventor?* — and the invention then passes through a fixed sequence of steps from filing to grant. Section 6 determines who may apply, and the Patents Act, 1970 prescribes the procedure.

A. Who may apply — s.6

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

1. the **true and first inventor** of the invention;
2. an **assignee** of the true and first inventor (for example an employer to whom the inventor has assigned rights); or
3. 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. A mere financier or supplier of money or materials is therefore not the true and first inventor; the inventor is the one who devises. Accordingly, a lab assistant who only *knew of* the invention is not the true and first inventor, and a student who *applies* a teacher's principle to make a new working invention is the true and first inventor of that invention.

B. The procedure — the step chain

1. **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.
2. **Specification (ss.9, 10).** A provisional secures the priority date; a complete specification with full description and **claims** must follow within 12 months.
3. **Publication (s.11A).** The application is published in the Official Journal, ordinarily after 18 months; until then it is kept secret.

4. **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.
5. **Examination and objections (ss.12–14).** The examiner searches for novelty and inventive step and issues a First Examination Report; the applicant answers the objections.
6. **Pre-grant opposition (s.25(1)).** *Any person* may oppose before grant on the s.25(1) grounds.
7. **Grant (s.43).** If the requirements are met, the patent is granted, sealed and entered in the Register (**s.67**), and the grant is published.
8. **Post-grant opposition (s.25(2)).** A *person interested* may oppose within 12 months of publication of grant.
9. **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 objections being met and the patent proceeding to grant. The governing text, **s.6(1)**, allows an application by the true and first inventor, his assignee, or the legal representative of a deceased entitled person.

C. Where the ownership problems fit

Disputes under this head usually concern **inventorship under s.6**, and the procedural steps determine when and how a challenge is raised. An **employer** who files in the firm's name owns the patent only if the employee assigned his rights (a written, registered assignment under s.68); absent that, the employee, as the person who devised the invention, is the true and first inventor. A **student** who applies a teacher's known principle to build a new working device is the inventor of that device — teaching a principle is not inventing. And where the true inventor **dies before filing**, the right passes to his *legal representative*, not to an assistant who merely knew of the invention. If a patent is nevertheless granted to a person **not entitled** to apply, the remedy lies in **opposition (s. 25)** before grant or **revocation (s.64)** after.

Leading cases

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — grant does not guarantee validity: a patent lacking novelty or inventive step can be revoked, which is why examination and opposition matter.

Conclusion

Only the real inventor — or his assignee or legal heir — may apply under **s.6**. The invention then travels a fixed path: file, specification, publish, request examination, examine, oppose, grant, with the patent lasting 20 years from filing. The entitlement to apply turns on *who devised the invention*.

Q1.8 — [16M] Distinguish between provisional and complete specification.

> *Asked: Mar 2021 (80), Apr 2022 (80), Jan 2025 (100), Jul 2025 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 8 (Specification — provisional and complete)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Specification defined (ss.9–10) — the heart of the patent.*
>
> *2. Provisional — secures priority date, no claims.*
>
> *3. Complete — full description + best method + claims (s.10).*
>
> *4. The 12-month link and the priority-date advantage (s.9).*
>
> *5. Comparison table; conclusion.*

Introduction

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 — provisional and complete — and they differ chiefly as to the **priority date** and the **claims**.

A. Provisional specification

A provisional specification is filed to **secure the priority date** as early as possible. It *describes* the invention — its nature and broad idea — but need **not** contain the final claims. It is a placeholder that fixes the date from which novelty is judged, so an inventor with the idea but not yet the finished detail can file now and perfect it later. A complete specification must be filed **within 12 months** of the provisional, or the application lapses (**s.9(1)**).

B. Complete specification

The complete specification (**s.10**) is the full, final document. It must:

1. **fully and particularly describe** the invention and how it works;
2. **disclose the best method** of performing it known to the applicant;
3. **end with claims** defining the scope of protection — the claims are the legal fence; and
4. be accompanied by an **abstract** giving technical information.

The **claims** are decisive: infringement is judged against the claims, not the description, so 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. If A files a provisional on 1 January and a rival publishes the same idea on 1 March, the rival's later publication cannot destroy A's novelty, provided A files her complete within the 12-month window.

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 window
Effect if missed	Application lapses (s.9(1))	No patent without it

The statutory hinge, **s.9(1)**, provides that where an application is accompanied by a provisional specification, a complete specification "shall be filed within twelve months," failing which the application "shall be deemed to be abandoned," and **s.10(4)** requires the complete specification to describe the invention fully, disclose the best method, and "end with a claim or claims defining the scope."

D. Why the claims matter most

The single most important part of the complete specification is the set of **claims**. They are the legal fence of the monopoly: everything within the claims is protected, everything outside them is free for the public. Two consequences follow. First, **infringement is measured against the claims**, not the descriptive body — a rival who takes the essential features defined in the claims infringes even if he varies trivial detail. Second, the claims control the patent's *strength*: draft them too narrowly and rivals design around them; draft them too broadly and they may be revoked for want of novelty or insufficiency. The provisional buys time and priority; the complete, through its claims, buys the actual scope of protection. This is why an inventor files a provisional the moment the idea is firm, then perfects the claims in the complete within the 12-month window (s.9).

The complete specification must also be **sufficient**: a person skilled in the field should be able to work the invention from the description alone. A description that is unclear or hides the best method fails the patent bargain, and insufficiency is itself a ground on which a patent can be opposed or revoked.

Conclusion

A provisional specification secures a priority date for an invention not yet fully developed; a complete specification, filed within 12 months, gives the full description and the claims

that define the monopoly. The claims fix the scope of protection and the provisional filing fixes the priority date; filing a provisional specification first gains time while protecting novelty, which is the advantage of the two-stage system.

Q1.9 — `[16M]` Explain the rights and obligations / limitations of a patentee.

> *Asked: Jan 2026 (80), Jan 2025 (80), Mar 2024 (100), Mar 2024 (80), Mar 2023 (100) · +4 earlier · Pattern: both · ★★★★ · Notes: Unit 1 → Topic 9 (Rights and obligations of patentee)*

> ***▤ ANSWER OUTLINE***
>
> *1. The exclusive rights under s.48 (product vs process).*
>
> *2. Ancillary rights — exploit, licence, surrender, sue.*
>
> *3. Term 20 years (s.53).*
>
> *4. Obligations/limits — working, compulsory licence, government use, fees.*
>
> *5. Natco v Bayer (2012) — right meets limitation.*

Introduction

A patent is not an absolute right against the whole world. 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 conferred by **s.48** are balanced by corresponding obligations and limitations.

A. The rights of a patentee

1. **Exclusive rights under s.48.** 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 or importing the product obtained directly by that process.
2. **Exploit the invention.** The patentee may manufacture and sell the invention himself.
3. **Assign or licence.** The patentee may assign or licence the patent to others (**s.68** — see Topic 10).
4. **Surrender.** The patentee may surrender the patent (**s.63**).
5. **Sue for infringement.** The patentee may sue and claim injunction, damages or an account of profits (**s.108**).

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

B. The obligations and limitations

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

1. **Working the patent.** The patentee is expected to work the invention commercially in India; failure invites a compulsory licence after three years (**s.84**) and a duty to file working statements.
2. **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.
3. **Government use and acquisition (ss.99–103).** The Central Government may use or acquire the patent for its own purposes, with compensation.
4. **Payment of renewal fees (s.53).** Non-payment causes the patent to lapse.
5. **No excluded subject-matter, and truthful disclosure.** A patent obtained by suppression can be revoked (**s.64**); and others may use the invention for research or to develop regulatory data under the Bolar exemption (**s.107A**).

The governing text, **s.48**, confers the exclusive right "to prevent third parties, who do not have his consent," from making, using, selling or importing the product (or using the process and the product directly obtained by it).

C. Right meets limitation — the pairing to write

Each right of the patentee is matched by the limitation that answers it:

1. **The right to exclude (s.48) vs the compulsory licence (s.84).** The patentee may stop everyone from making the invention — but if, three years after grant, he does not meet public demand, charges an unaffordable price, or fails to work the patent in India, a third party may obtain a compulsory licence. This is exactly what happened to Bayer's cancer drug in *Natco v Bayer (2012)*.
2. **The right to exploit vs the duty to work.** The patentee may manufacture and profit — but he is expected to actually work the invention in India, and must file working statements; a patent that merely blocks others without being worked invites the s.84 licence.
3. **The right to enforce (s.108) vs the defence of invalidity.** The patentee may sue infringers — but the defendant may counter-attack by challenging validity on any s.64 ground, so an over-broad or non-novel patent is fragile in litigation (*F. Hoffmann-La Roche v Cipla, 2012/2015*).
4. **The exclusive right vs government use (ss.99–103).** Even the strongest patent yields to the State's use for public purposes, the patentee's remedy being compensation, not an injunction.

This pairing shows the deeper point: a patent is a **conditional** monopoly, granted for the public benefit and withdrawn or curtailed the moment it works against that benefit.

Leading cases

- ***Natco Pharma v Bayer Corporation (2012)*** — the 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, but the defendant may challenge validity as a **defence**.

Conclusion

A patentee may stop others making, using, selling or importing the invention, and may 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. Each right is matched by a counter-limitation: the exclusive right of **s.48** against the compulsory licence of **s.84**, exactly as played out in *Natco v Bayer (2012)*. Every right of the patentee is thus subject to a limitation.

Q1.10 — `[16M]` Explain the modes of transfer of patent rights — assignment and licensing.

> *Asked: Nov 2021 (100), Jul 2026 (100) · Pattern: 100-only · ★★ · Notes: Unit 1 → Topic 10 (Transfer of patent rights — assignment and licensing)*

> ***▤ ANSWER OUTLINE***
>
> *1. A patent is property — it can be assigned, licensed, mortgaged.*
>
> *2. Assignment — transfers ownership; writing + registration (s.68).*
>
> *3. Licence — permits use, owner keeps title; exclusive/non-exclusive/compulsory.*
>
> *4. Co-ownership — consent rule (s.50(3)).*
>
> *5. Conclusion.*

Introduction

A patent is property, and like any property it can be sold, mortgaged or rented out. The Patents Act (**ss.68–70**) recognises three main modes of transfer — assignment, licensing and the statutory (compulsory) licence — with a special rule where the patent is jointly owned.

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 — for example limited to a territory. To be valid it **must be in writing** and **registered** with the Controller (**s.68**); an oral assignment is ineffective. Assignment is the outright *sale* of the patent.

B. Licensing

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

1. **Exclusive** — only the licensee, even to the exclusion of the patentee, may work the invention.
2. **Non-exclusive** — the patentee may licence several people at once.
3. **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. **However**, 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.

The governing texts confirm it: **s.68** provides that an assignment, mortgage or licence "shall not be valid unless… in writing" and reduced to a duly executed document; and **s. 50(3)** provides that "a licence shall not be granted and a share shall not be assigned by one of two or more" co-owners "except with the consent of the other."

D. Assignment and licence compared

The two voluntary modes of transfer must be distinguished.

Feature	Assignment	Licence
What passes	**Ownership** of the patent	Only **permission** to work it
Who keeps title	The assignee (new owner)	The patentee (title unchanged)
Typical form	Absolute or partial (by territory)	Exclusive / non-exclusive / compulsory
Formalities	Writing + registration (s.68)	Writing + registration (s. 68)

An assignment is a **sale**; the buyer steps into the patentee's shoes. A licence is a **rental**; the owner stays owner and simply permits use for royalties. Both must be in writing and registered — an oral dealing is a nullity.

E. Applying the rules — two common problems

1. **A sole patentee licensing many firms.** Because a single owner has no co-owner to answer to, he may grant as many **non-exclusive** licences as he wishes. A company that holds a patent alone may therefore licence it to several manufacturers at once; only if it grants an *exclusive* licence is it thereafter barred from licensing others.
2. **A co-owner assigning his share.** Where the patent is jointly held, one co-owner cannot assign his share or grant a licence without the other's consent (**s.50(3)**). The tempting error is to reason that a co-owner who may freely *use* the invention (s.50(2)) may also freely *sell* his share — but using and assigning are different rights, and a unilateral assignment is void. The consent requirement protects each co-owner from being saddled with an unwanted business partner.

Leading cases

- ***Natco Pharma v Bayer Corporation (2012)*** — illustrates the **compulsory (involuntary) licence** as a statutory mode of transfer standing apart from voluntary assignment.

Conclusion

Assignment sells the patent; a licence rents it — and both must be in writing and registered under **s.68**. If a patent has co-owners, none may sell or licence his share without the others' consent (**s.50(3)**), whereas a single owner may licence to as many firms as he likes. Above the voluntary modes sits the compulsory licence, the State's public-interest override. Thus, a patent may be assigned, licensed voluntarily or licensed compulsorily.

Q1.12 — `[16M]` Explain the provisions relating to use and acquisition of patented inventions by the Government.

> *Asked: Aug 2024 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 12 (Government use / acquisition of patented inventions)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Necessity trumps monopoly — the State may use or take a patent.*
>
> *2. Government use (ss.100–102) — borrow and pay.*
>
> *3. Acquisition (s.102) — take over and pay.*
>
> *4. Remedy is compensation (s.103), not injunction.*
>
> *5. Conclusion — use vs acquisition.*

Introduction

Public needs such as an epidemic do not admit of delay in licence negotiations. The Patents Act lets the State **use** — or even **buy outright** — any patent for a public purpose, paying the patentee afterwards. Two distinct powers must be kept apart: government use and acquisition.

A. Government use (ss.100–102)

1. **The power.** Under **s.100**, the Central Government, or anyone authorised in writing by it, may **use a patented invention for the purposes of the Government**.
2. **Before or after grant.** It may be exercised even *before* the patent is granted.
3. **Scope of "purposes of Government".** This includes supply to any government department and public-health programmes — for example, dispensing a patented drug at public dispensaries.
4. **The patentee is paid, not stopped.** The terms are agreed or, failing agreement, settled by the High Court (**s.103**). Government use is therefore a **statutory licence**: the patentee keeps the patent but must tolerate the government's use in return for compensation. It is **not** infringement, so the patentee cannot obtain an injunction.

B. Acquisition (s.102)

Under **s.102**, the Central Government may, by notification, **acquire a patent outright** for a public purpose. Here **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.

C. The remedy — compensation, not injunction

The patentee's remedy is limited. Because government use and acquisition are lawful under the Act, the patentee cannot sue for infringement or obtain an injunction; the only remedy is **compensation** — agreed between the parties or settled by the High Court under **s.103**. If the Central Government uses a company's patented drug at public dispensaries without permission, the use is authorised by s.100, the suit for infringement fails, and the patentee is entitled only to agreed or court-settled compensation.

The governing text, **s.100(1)**, provides that "at any time after an application for a patent has been filed… 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."

D. Government use and acquisition compared

The two powers are distinct.

Feature	Government use (s.100)	Acquisition (s.102)
What happens	The State **uses** the patent	The State **takes over** the patent
Ownership	Stays with the patentee	**Passes** to the Government

Feature	Government use (s.100)	Acquisition (s.102)
Trigger	“Purposes of Government”	A public purpose, by notification
Patentee’s remedy	Compensation (s.103)	Compensation (s.103)
Nature	A statutory licence	A compulsory acquisition

In both, the patentee cannot obtain an **injunction**; the Act converts what would otherwise be infringement into a lawful act for which money is the only remedy. This mirrors the philosophy running through Chapter XVII — the monopoly is always subordinate to genuine public need.

E. Why compensation, not injunction

The reason the remedy is compensation is structural. An injunction would let a private patentee halt a public programme — vaccinating a population, stocking dispensaries, supplying the armed forces — which the Act refuses to permit. So the patentee’s exclusive right (s.48) is expressly overridden for government purposes, and the balance is restored by paying him. If the Government and patentee cannot agree the amount, the **High Court** fixes it under **s.103**. This is why, when the Central Government uses a patented drug at its public dispensaries without prior permission, the patentee’s infringement suit must fail: the use is authorised by s.100, and the only live question is *how much* the patentee is paid, not *whether* the use can be stopped.

Leading cases

- ***Natco Pharma v Bayer Corporation (2012)*** — reflects the same **public-interest philosophy** that animates ss.100–102; the monopoly yields to public need, with compensation.

Conclusion

The Government may **use** a patent for public purposes and pay the patentee (**s.100**), or **acquire** the patent outright by notification and pay for it (**s.102**). Either way the act is lawful, so the patentee’s remedy is **compensation** (**s.103**), never an injunction. Government use is a statutory licence, while acquisition transfers the patent to the Government; in both, the public need prevails over the monopoly, and compensation is the patentee’s only relief.

Q1.13 — `[16M]` Explain the grounds for revocation of a patent. Distinguish revocation from surrender.

> *Asked: Jun 2019 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 13 (Revocation and surrender of patents)*

> ▤ ***ANSWER OUTLINE***
>
> *1. A granted patent is not a guaranteed patent.*
>
> *2. Surrender (s.63) — voluntary, by the patentee.*
>
> *3. Revocation (s.64) — by the High Court, on listed grounds.*
>
> *4. The grounds — novelty, prior claiming, obviousness, false suggestion.*
>
> *5. Bishwanath Prasad; conclusion.*

Introduction

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. Two mechanisms end a patent early: **surrender** (voluntary, by the patentee) and **revocation** (cancellation by the High Court). The grounds for revocation are set out in s. 64.

A. Surrender — s.63

A patentee may, at any time, **offer to surrender** his patent by notice to the Controller. It is entirely **voluntary** — the patentee gives up the patent himself, for example because he cannot pay renewal fees or the patent is weak. The Controller advertises the offer, interested persons may oppose, and if accepted the patent is revoked. Surrender is the owner’s own act.

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:

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

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

C. Applying the grounds — prior claiming

Prior claiming is a common ground of revocation. If A obtains an Indian patent and, months later, a prior US patent with an *earlier* priority date claiming the same invention surfaces, A's invention was not novel and was already claimed; the patent is liable to revocation under **s.64**. The governing text provides that 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… be revoked by the High Court" on the listed grounds.

D. Surrender and revocation compared

Feature	Surrender (s.63)	Revocation (s.64)
Who acts	The **patentee** himself	The **High Court** (or Controller in opposition)
Nature	**Voluntary** giving-up	**Compulsory** cancellation
Who may move	The owner	Any person interested / Central Government
Typical reason	Weak patent, unpaid fees	Patent should never have issued
Effect	Patent revoked once accepted	Patent struck off on proven grounds

The contrast is who acts and why: the patentee gives up a patent he no longer wants; the court cancels a patent the public should never have suffered.

E. Where the grounds bite — worked application

The operation of s.64 is best seen in the **prior-claiming** situation. Novelty in Indian patent law is judged against prior art **anywhere in the world**, and a grant is only *prima facie* valid — it can be undone if the invention was not new or was already claimed. So when a patentee obtains an Indian patent and a foreign patent with an **earlier priority date** claiming the *same* invention later surfaces, the Indian patent is exposed on two grounds at once: it **lacked novelty** (the invention was already part of world prior art) and it was **already claimed** (prior claiming). The person interested may petition the High Court, or, if sued for infringement, raise revocation as a **counter-claim** in the same suit — the defensive use that makes s.64 the infringer's standard reply.

Leading cases

- ***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.

Conclusion

Surrender is the owner voluntarily handing the patent back (**s.63**); **revocation** is the High 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 false suggestion. The distinction is who acts and why: the patentee gives up a patent he no longer wants; the court cancels a patent the public should never have suffered.

Q1.14 — `[16M]` What acts constitute infringement of a patent? Discuss the remedies available.

> *Asked: Jul 2026 (100), Jan 2026 (100), Aug 2024 (80), Mar 2024 (80), Oct 2023 (100) · +1 earlier · Pattern: both · ★★★ · Notes: Unit 1 → Topic 14 (Infringement of patents and remedies)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Infringement = doing s.48 acts without consent; judged against the claims.*
>
> *2. Acts of infringement (product and process).*
>
> *3. The two tests — literal and pith-and-marrow.*
>
> *4. Defences (s.107 with s.64 grounds; s.107A Bolar).*
>
> *5. Remedies (s.108) — injunction, damages/account, delivery up.*

Introduction

Every infringement suit turns on one question: did the defendant's product fall **within the claims** of the patent? The claims are the fence, and crossing it without the patentee's consent is infringement. The Act defines the acts of infringement, admits certain defences, and provides remedies under **s.108**.

A. 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:

1. **Product patent** — making, using, selling, offering for sale, or importing the patented product.
2. **Process patent** — using the patented process, or using, selling or importing the product directly obtained by that process.

Infringement is judged against the **claims** of the complete specification (Topic 8), applying two tests:

1. **Literal infringement** — the defendant's product falls within the words of the claim.

2. **Pith and marrow / equivalents** — the defendant has taken the **essential features**, even if trivially varied. A cosmetic change (a different casing on a machine with the same claimed parts) does not avoid infringement.

B. Defences

A defendant may plead:

1. **Invalidity** of the patent on any **s.64** ground (read with **s.107**) — the most common counter-attack.
2. That the acts fall within an **exception** — experimental or research use, government use (**s.100**), or the **Bolar exemption** (**s.107A**: use to develop regulatory data).
3. **Parallel importation** (**s.107A(b)**).
4. That the acts are **outside the claims**.

C. 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:

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

The governing text, **s.108(1)**, provides that the reliefs "include an injunction… and, at the option of the plaintiff, either damages or an account of profits."

D. The remedies explained

Each remedy answers a different need, and a full-mark answer says what each does.

1. **Injunction.** A **temporary (interlocutory)** injunction restrains the infringing acts during the trial, granted on the usual tests of a *prima facie* case, balance of convenience and irreparable injury; a **permanent** injunction is granted with the final decree. The injunction is the patentee's most valuable relief, because it actually stops the infringement.
2. **Damages or account of profits.** The plaintiff must **elect** between the two — he cannot have both. **Damages** compensate the patentee for his own loss (lost sales, price erosion); an **account of profits** strips the infringer of the gains he made from the infringement. The choice depends on whether the patentee's loss or the infringer's gain is larger.
3. **Delivery up or destruction.** The court may order the infringing goods, and the moulds or plates used to make them, to be delivered up or destroyed, so the infringement cannot simply resume.

E. Who is liable, and where the suit lies

The suit is brought against anyone who does a reserved act **without consent** — the manufacturer, the seller, the importer. It is filed in a **District Court**, but if the defendant challenges the validity of the patent (which is usual), the suit and counter-claim are transferred to the **High Court** (**s.104**). Because these suits are technical and slow, the Supreme Court in *Bajaj Auto v TVS Motor (2009)* directed that patent infringement matters be tried expeditiously. Liability, throughout, is judged against the **claims**: if the defendant's product or process falls within them, he infringes; if it does not, or if the patent is invalid, he is free.

Leading cases

- ***F. Hoffmann-La Roche v Cipla (2012/2015)*** — infringement turns on whether the defendant's product falls **within the claims**; validity may be raised as a defence.
- ***Bajaj Auto v TVS Motor (2009)*** — patent infringement suits must be tried **speedily**.

Conclusion

Infringement is anyone doing what only the patentee may do — make, use, sell or import the invention — without consent, measured against the patent's **claims**. The patentee may obtain an **injunction**, plus either **damages or the infringer's profits**, plus **delivery-up**, under **s.108**. The defendant's usual answer is to attack the patent's validity under s.64. Thus, liability is measured by the claims and relief is governed by s.108.

B. Short Notes (8M — Q8) — Model Answers

S1.1 — `[8M]` Write a short note on: International character of Intellectual Property.

> *Asked: Jul 2025 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 2 (Meaning, nature and different forms/kinds of Intellectual Property)*

> ***▤ ANSWER OUTLINE***
>
> *1. IP rights are territorial.*
>
> *2. Creations cross borders — need for international protection.*
>
> *3. Conventions: Paris, Berne, PCT, Madrid, TRIPS; WIPO.*
>
> *4. Effect on Indian law.*

Introduction

Intellectual property rights are **territorial**: an Indian patent or trade mark protects only within India, and protection stops at the border. Creations of the mind, however, are used, copied and traded across the world. This tension gives intellectual property its **international character**: effective protection is possible only through co-operation among States.

A. Why IP is international

1. **Mobility of creations.** An invention, a brand or a film can be copied in any country the moment it is disclosed. A right confined to one country would leave the creator unprotected everywhere else.
2. **International trade.** Goods carrying patents, marks and designs move across borders, so traders need comparable protection in every market.
3. **Uniform standards.** Divergent national laws discourage investment; minimum common standards make protection predictable.

B. The international framework

1. **Paris Convention, 1883** — industrial property; establishes **national treatment** (foreigners receive the same protection as nationals) and the **right of priority** (12 months for patents, 6 months for marks and designs).
2. **Berne Convention, 1886** — copyright.
3. **Patent Cooperation Treaty, 1970** and the **Madrid System** — a single international application for patents and for trade marks respectively.
4. **WIPO (1967)** — the UN specialised agency that administers these treaties.
5. **TRIPS Agreement, 1994** — makes minimum IP standards a condition of membership of the WTO and enforceable through its dispute machinery.

These instruments do not create a world patent or world trade mark; rights are still granted country by country, but on fair and common terms.

C. Effect on Indian law

India's IP statutes were reshaped to meet these obligations: the **Patents Act, 1970** was amended in 2005 to introduce product patents, and the **Trade Marks Act, 1999** and the **GI Act, 1999** were enacted to comply with TRIPS. India acceded to the Paris Convention and the PCT in 1998 and to the Madrid Protocol in 2013.

Conclusion

Thus, although intellectual property rights are territorial, their subject-matter is global; the international character of IP is secured through conventions such as Paris, Berne, the PCT, Madrid and TRIPS, administered by WIPO, which national laws, including India's, implement.

S1.2 — [8M] Write a short note on: Intellectual Property and economic development.

> *Asked: Jun 2019 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 3 (Historical background, growth and economic/labour justification of IPR; human creativity)*

> ▤ ***ANSWER OUTLINE***
>
> *1. IP as incentive — recouping investment.*
>
> *2. Market failure — knowledge as a public good.*
>
> *3. Disclosure and diffusion of technology.*
>
> *4. Balance — public interest safeguards; Novartis.*

Introduction

Intellectual property law grants a creator a temporary exclusive right over his creation. Its relation to **economic development** rests on the premise that protected creativity produces more inventions, investment and trade, and therefore growth, provided the monopoly is balanced against public access.

A. IP as an incentive to invest

Research is costly, while copying is cheap. A firm that spends years developing a medicine can be undercut by a rival that copies the finished product at negligible cost. A limited monopoly allows the innovator to recoup the cost of research; without it, investment in research would not be made. This is the **reward or incentive** justification.

B. Correcting a market failure

Knowledge is a **public good** — easy to copy and difficult to charge for. Left unprotected, the market under-produces it. By making knowledge excludable for a limited term, IP law corrects this market failure, which is economically efficient for society in the long run.

C. Disclosure and diffusion of technology

The patent system requires full disclosure of the invention in return for protection. Society thus acquires the knowledge at once and free use of it after the term expires. Disclosure spreads technology, prevents duplication of research and builds the public store of knowledge on which further development depends.

D. Trade and investment

Uniform protection under the **TRIPS Agreement, 1994** encourages the transfer of technology and foreign investment, and protects national assets such as geographical indications (Darjeeling tea, Basmati rice) in export markets.

E. The balance

Excessive protection can restrict access to essential goods. Indian law therefore contains safeguards: exclusions under **s.3** (including s.3(d) against trivial new forms of known substances), **compulsory licences** (s.84) and **government use** (s.100).

Leading case

- ***Novartis AG v Union of India (2013)*** — a patent for the beta-crystalline form of imatinib mesylate was refused under s.3(d); a patent monopoly is granted for a genuine invention in the public interest, not as an absolute private right.

Conclusion

Thus, intellectual property promotes economic development by rewarding innovation, correcting market failure and spreading technology, while public-interest safeguards ensure that the monopoly serves, and does not obstruct, development.

S1.3 — `[8M]` Write a short note on: Nature of patent rights.

> *Asked: Jul 2025 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 4 (Meaning, definition and object of patent; principles underlying patent law)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Limited monopoly — quid pro quo.*
>
> *2. Exclusive right to prevent — s.48.*
>
> *3. Territorial, time-bound (s.53), property (s.68).*
>
> *4. Not absolute — limitations; validity not guaranteed (Bishwanath).*

Introduction

A **patent** is an exclusive right granted by the State to an inventor for a limited period in return for full disclosure of the invention. Under **s.2(1)(m)** of the Patents Act, 1970, “patent” means a patent for any invention granted under the Act. The nature of the right follows from this bargain of monopoly for disclosure.

A. Features of patent rights

1. **A limited monopoly — quid pro quo.** Society gives the inventor a monopoly; the inventor gives society the knowledge of the invention and, after the term, its free use. The patent rewards disclosure, not secrecy.
2. **An exclusive right to prevent.** Under **s.48**, a product patent confers the exclusive right to prevent third parties, without the patentee’s consent, from making, using, offering for sale, selling or importing the product in India; a process patent confers the right to prevent use of the process and dealing in the product obtained directly by it.

3. **Time-bound.** The term is **20 years** from the date of filing (s.53), after which the invention falls into the public domain. Non-payment of renewal fees causes the patent to lapse.
4. **Territorial.** An Indian patent operates only within India.
5. **Property.** A patent is intangible property; it may be assigned or licensed, in writing and registered (s.68), and co-owners may not assign or license without each other's consent (s.50(3)).
6. **A creature of statute.** The right exists only as granted by the Act.

B. Limitations

Patent rights are not absolute. They are subject to compulsory licences (s.84), government use and acquisition (ss.100–103), the duty to work the invention in India, and revocation (s.64). Grant does not guarantee validity.

Leading case

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — a patent for a device for holding brass utensils on a lathe was revoked for want of novelty and inventive step; the grant of a patent does not guarantee its validity, and patent law exists to encourage real invention.

Conclusion

Thus, a patent right is a statutory, territorial and time-limited exclusive right to prevent others from exploiting the invention, granted in return for disclosure and subject to public-interest limitations.

S1.4 — `[8M]` Write a short note on: Specification (provisional and complete).

> *Asked: Apr 2022 (100), Mar 2023 (100), Oct 2023 (100), Jan 2026 (100) · Pattern: 100-only · ★★★ · Notes: Unit 1 → Topic 8 (Specification — provisional and complete)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Meaning — ss.9–10.*
>
> *2. Provisional specification — priority date.*
>
> *3. Complete specification — s.10(4); claims.*
>
> *4. Advantage of the two-stage system.*

Introduction

A **specification** is the written document that describes the invention and is filed with the patent application (**ss.9–10** of the Patents Act, 1970). It defines what is claimed and how far the monopoly extends. A specification is either **provisional** or **complete**.

A. Provisional specification

A provisional specification is filed to **secure the priority date** as early as possible, when the invention is conceived but not yet fully worked out. It describes the nature and broad idea of the invention but need not contain claims. Under **s.9(1)**, the complete specification must be filed **within twelve months** of the filing of the application; otherwise the application is deemed to be abandoned.

B. Complete specification

Under **s.10(4)**, every complete specification must:

- 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** of performing the invention known to the applicant;
- **end with a claim or claims** defining the scope of the invention; and
- be accompanied by an **abstract** giving technical information.

C. Importance of claims

The claims fix the boundaries of the monopoly. Infringement is judged against the claims and not against the description. Claims drafted too narrowly allow rivals to avoid them; claims drafted too broadly invite revocation for want of novelty or insufficiency.

D. Distinction

Point	Provisional	Complete
Purpose	Secures the priority date	Full disclosure for grant
Claims	Not required	Mandatory
Detail	Broad description	Full description with best method
Time	Complete to follow within 12 months	Filed within that period

E. Advantage of filing a provisional specification

Novelty is tested as of the priority date fixed by the provisional specification. A publication or filing by a rival after that date cannot defeat the patent, and the inventor gains twelve months to perfect the invention.

Conclusion

Thus, the provisional specification secures an early priority date, and the complete specification, through its full description and claims, defines the scope of the patent; the two together balance early protection with full disclosure.

S1.5 — `[8M]` Write a short note on: Rights of a patentee.

> *Asked: Mar 2021 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 9 (Rights and obligations of patentee)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Exclusive rights — s.48 (product, process).*
>
> *2. Exploitation, assignment and licence — s.68.*
>
> *3. Surrender (s.63); suit for infringement (s.108).*
>
> *4. Limits — ss.84, 100, 107A; Roche v Cipla.*

Introduction

A patent confers on its holder exclusive rights over the invention for **20 years** from filing (**s.53**). The principal rights are set out in **s.48** of the Patents Act, 1970, and others flow from the patentee's ownership of the patent as property.

A. Exclusive rights under s.48

1. **Product patent.** The exclusive right to prevent third parties, who do not have the patentee's consent, from **making, using, offering for sale, selling or importing** the patented product in India.
2. **Process patent.** The exclusive right to prevent third parties from **using the process**, and from using, offering for sale, selling or importing the **product obtained directly** by that process in India.

B. Other rights

1. **Right to exploit** the invention himself by manufacturing and selling it.
2. **Right to assign or license.** The patentee may assign the patent wholly or partly, or grant exclusive or non-exclusive licences; the assignment or licence must be in writing and registered (s.68). Where the patent is co-owned, one co-owner cannot assign his share or grant a licence without the consent of the others (s.50(3)).
3. **Right to surrender** the patent by notice to the Controller (s.63).
4. **Right to sue for infringement** and obtain an injunction, damages or an account of profits, and delivery-up (s.108).

C. Limits on the rights

The rights are not absolute. They are subject to compulsory licences where the reasonable requirements of the public are not met, the invention is not available at a reasonably affordable price or is not worked in India (s.84); government use and acquisition with compensation (ss.100–103); experimental and regulatory use (s.107A); and the duty to pay renewal fees, failing which the patent lapses.

Leading case

- ***F. Hoffmann-La Roche Ltd. v Cipla Ltd. (2015)*** — Cipla launched a generic version of Roche's patented lung-cancer drug erlotinib; the Delhi High Court (Division Bench) held the patent valid and infringed, the s.48 rights being enforced by reading the claims, while the defendant may attack validity by defence or counter-claim.

Conclusion

Thus, a patentee has the exclusive right to make, use, sell and import the invention, to assign or license it and to sue for infringement, but these rights are exercised subject to the public-interest limitations of the Act.

S1.6 — `[8M]` Write a short note on: Transfer of patent rights.

> *Asked: Jun 2019 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 10 (Transfer of patent rights — assignment and licensing)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Patent as property — ss.68–70.*
>
> *2. Assignment — writing and registration.*
>
> *3. Licences — exclusive, non-exclusive, compulsory.*
>
> *4. Co-ownership — s.50(3).*

Introduction

A patent is property and, like other property, may be transferred. The Patents Act, 1970 (**ss.68–70**) recognises transfer by **assignment** and by **licence**, and **s.50** governs patents held by co-owners.

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, for example limited to a territory. Under **s.68**, an assignment is not valid unless it is **in writing** and the agreement is reduced to the form of a document embodying all its terms and conditions and duly executed; it must also be **registered** with the Controller. An oral assignment is ineffective.

B. Licence

A **licence** does not transfer ownership; it permits another person to work the patent while the patentee retains title. Licences are of three kinds:

1. **Exclusive licence** — only the licensee may work the invention, even to the exclusion of the patentee.
2. **Non-exclusive licence** — the patentee may license several persons at the same time.
3. **Compulsory licence** (ss.84, 92) — granted by the Controller in the public interest, against the patentee's wishes.

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

C. Co-ownership — s.50

Where a patent is owned by two or more persons, each is entitled to an equal undivided share and may work the invention for his own benefit without accounting to the others (s. 50(2)). However, under **s.50(3)**, a licence shall not be granted and a share shall not be assigned by one co-owner except with the consent of the other co-owner or co-owners. A unilateral assignment is invalid. A sole patentee, by contrast, may grant non-exclusive licences to as many persons as he wishes.

D. Transmission

A patent also passes by operation of law, for example to the legal representative of a deceased patentee, and the new owner must apply for registration of his title.

Conclusion

Thus, patent rights are transferred by assignment, which passes ownership, or by licence, which permits use; both must be in writing and registered under s.68, and a co-owner cannot assign or license without the consent of the others.

S1.7 — `[8M]` Write a short note on: Revocation of patent.

> *Asked: Mar 2024 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 13 (Revocation and surrender of patents)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Meaning — s.64; who may petition.*
>
> *2. Grounds.*
>
> *3. Surrender — s.63; s.65.*
>
> *4. Bishwanath Prasad.*

Introduction

Revocation is the cancellation of a granted patent. The grant of a patent does not guarantee its validity, and under **s.64** of the Patents Act, 1970 a patent may be revoked by the **High Court** on the petition of **any person interested** or of the **Central Government**, or on a **counter-claim** in a suit for infringement.

A. Grounds of revocation — s.64

1. **Want of novelty** — the invention was publicly known or used, or anticipated by prior publication, before the priority date.
2. **Prior claiming** — the invention was claimed in an earlier patent of prior priority date.
3. **Obviousness** — the invention does not involve an inventive step.
4. **Not an invention / not patentable** — the subject-matter falls under s.3 or s.4.
5. **Insufficiency** — the complete specification does not sufficiently describe the invention, or the claims are not clearly defined.
6. **Not entitled** — the patent was granted to a person not entitled to apply.
7. **False suggestion or misrepresentation** — the patent was obtained on a false suggestion or representation.
8. **Non-disclosure** — failure to disclose information on foreign applications as required by s.8, or wrongful obtaining of the invention.

B. Revocation in other cases

Under **s.65**, a patent for an invention later found to relate to **atomic energy** may be revoked. Revocation is also used as a defence: a defendant in an infringement suit commonly counter-claims for revocation.

C. Surrender distinguished — s.63

Surrender is voluntary: the patentee may at any time offer to surrender the patent by notice to the Controller. The offer is advertised, interested persons may oppose it, and if it is accepted the patent is revoked. Revocation under s.64 is compulsory cancellation by the court.

Leading case

- ***Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979)*** — the defendants to an infringement suit counter-claimed for revocation; the patent for a device for holding brass utensils on a lathe was revoked for want of novelty and inventive step, since grant does not guarantee validity.

Conclusion

Thus, a patent may be revoked by the High Court under s.64 on grounds such as want of novelty, prior claiming, obviousness, insufficiency or false suggestion, while surrender under s.63 is the patentee’s voluntary relinquishment.

S1.8 — [8M] Write a short note on: Patent agent.

> *Asked: Dec 2018 (100), Dec 2019 (100), Nov 2021 (100) · Pattern: 100-only · ★★ · Notes: Unit 1 → Topic 15 (Patent agent)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Meaning — ss.125–132.*
>
> *2. Qualifications — s.126.*
>
> *3. Functions — s.127.*
>
> *4. Restriction — s.129; Art. 19(6).*

Introduction

A **patent agent** is a person whose name is entered in the register of patent agents maintained under the Patents Act, 1970 and who is entitled to practise before the Patent Office (**ss.125–132**). Drafting a specification requires both legal and technical skill, and the Act reserves this work to qualified persons.

A. Qualifications — s.126

A person is qualified to be registered as a patent agent if he:

1. is a **citizen of India**;
2. has **completed the age of 21 years**;
3. holds a **degree in science, engineering or technology** from a recognised university; and
4. has **passed the qualifying examination** prescribed, or has served for at least ten years as an examiner or in the office of the Controller.

An advocate’s qualification alone is not sufficient.

B. Functions — s.127

A registered patent agent is entitled to:

1. **practise before the Controller** and the Patent Office;
2. **prepare and draft** specifications and other documents for filing; and
3. **do all acts** connected with a patent application or proceeding on behalf of a client.

C. Restriction — s.129

No person other than a registered patent agent, or the applicant himself, may practise as a patent agent, describe himself as one, or draft specifications for reward. The restriction protects applicants from incompetent drafting, since a badly worded claim can destroy the value of an invention.

D. Constitutional validity

The reservation of patent-agent work to qualified persons is a restriction on the freedom to practise a profession under **Article 19(1)(g)**. It is a **reasonable restriction** under **Article 19(6)**, because qualification requirements in the public interest are permitted and patent drafting needs technical competence. Section 126 is therefore valid.

E. Importance

The patent agent acts as the link between the inventor and the Patent Office: he translates a technical invention into a specification whose claims define the monopoly, answers examination objections, and conducts oppositions and other proceedings.

Conclusion

Thus, a patent agent is a qualified professional — an Indian citizen of 21 years with a science degree who has passed the qualifying examination — registered under the Act, who alone may practise before the Patent Office for reward, a restriction valid under Article 19(6).

C. Problems — Model Answers (IRAC)

P1.1 — `[Prob]` An employee, after much effort in the laboratory, comes out with an invention; after the invention the employer obtains a patent in the name of the firm. Who owns the patent? Advise. *(Decoy: the employer automatically owns whatever the employee makes.)*

> *Asked: Dec 2019 (100), Mar 2021 (100), Nov 2021 (100), Nov 2022 (80) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 7 (Procedure; who may apply — s.6)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — employee-inventor or employer-firm?*
>
> *2. Rule — s.6 true and first inventor; assignment needed.*
>
> *3. Apply — kill the “employer owns automatically” decoy.*
>
> *4. Verdict — the employee owns absent an assignment.*

Issue.

Where an employee devises an invention through his own effort but the employer files and obtains the patent in the firm’s name, who is entitled to the patent?

Rule.

1. Under **s.6**, an application may be made only by the **true and first inventor**, his **assignee**, or the legal representative of a deceased entitled person. The **true and first inventor** (**s.2(1)(y)**) is the person who *actually devised* the invention.
2. An employer can own the patent only if the employee has **assigned** his rights (as an assignee under s.6), and an assignment must be in **writing and registered** (**s.68**). Mere employment does not, by itself, transfer inventorship.

Application.

1. It may be contended that the **employer automatically owns** whatever an employee produces. The contention fails — inventorship follows the person who devised the invention, and ownership passes to the employer only by a valid assignment or a contract of employment expressly assigning inventions.
2. Here the **employee** devised the invention through his own laboratory effort, so he is the true and first inventor under s.6. There is no mention of a written assignment; the employer's act of filing in the firm's name does not create ownership. Absent an assignment, the firm was not entitled to apply.

Conclusion.

The **employee is the true and first inventor** and entitled to the patent. The firm's patent, taken without an assignment, is liable to be challenged; the employee may seek correction of the register or apply on the ground that the patent was obtained by a person not entitled under **s.6**. Only a written, registered assignment (s.68) would have given the employer good title.

P1.2 — `[Prob]` A physics teacher explains a principle in class. A student uses that principle to make a working invention producing a new result. The student claims a patent. Who is entitled? *(Decoy: the idea "came from" the teacher, so the teacher owns it.)*

> *Asked: Mar 2023 (100), Oct 2023 (100), Jan 2025 (80) · Pattern: both · ★★ · Notes: Unit 1 → Topic 7 (Procedure; who may apply — s.6)*

> ⚠ **DON'T CONFUSE**
>
> **Looks like:** the employee-invention problem (P1.1, Unit 1) — both ask "who owns the patent". **How it differs:** P1.1 turns on the missing **assignment** (employer vs employee); here the question is pure **inventorship** — did teaching a principle make the teacher the inventor? **Tell them apart by:** an employer/firm filing points to P1.1; a teacher's lecture feeding a student's own device points here.

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — teacher or student as inventor?*
>
> *2. Rule — s.6 true and first inventor is the one who devises.*
>
> *3. Apply — kill the “idea came from the teacher” decoy.*
>
> *4. Verdict — the student owns the patent.*

Issue.

Where a student applies a principle taught by a teacher to build a new, working, result-producing invention, is the teacher or the student the true and first inventor?

Rule.

1. Under **s.6**, only the **true and first inventor** may apply, and under **s.2(1)(y)** that is the person who **actually devised** the invention — not one who merely stated a known principle.
2. A known scientific principle is not itself an invention (compare **s.3(c)**, which bars a mere discovery of a scientific principle); inventorship attaches to the person who *applies* it to produce a new working result.

Application.

1. It may be contended that because the idea “came from” the teacher’s lecture, the teacher is the inventor. The contention fails — teaching a principle is not inventing a device, and the principle was already known.
2. Here the **student** took the known principle and applied it to create a **new working invention producing a new result**. That act of devising the working invention makes the student the true and first inventor; the teacher contributed only pre-existing knowledge.

Conclusion.

The **student is the true and first inventor** and is entitled to apply for and own the patent under **s.6**. The teacher, having merely explained a known principle, has no claim to the patent.

P1.3 — `[Prob]` A professor invents something in his spare time using the university’s infrastructure and claims a patent. The university claims the patent. Who owns it? *(Decoy: using the employer’s facilities transfers ownership to the employer.)*

> *Asked: Jan 2025 (100), Jul 2025 (100) · Pattern: 100-only · ★★ · Notes: Unit 1 → Topic 7 (Procedure; who may apply — s.6)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — professor or university as owner?*
>
> *2. Rule — s.6 true and first inventor; assignment needed.*
>
> *3. Apply — kill the “used university facilities” decoy.*
>
> *4. Verdict — the professor owns absent an assignment.*

Issue.

Where a professor devises an invention in his spare time but using university infrastructure, and no assignment exists, does the professor or the university own the patent?

Rule.

1. Under **s.6**, the **true and first inventor** (**s.2(1)(y)**) — the one who actually devised the invention — is entitled to apply, unless he has **assigned** his rights.
2. An assignment must be in **writing and registered** (**s.68**). Employment or the use of an employer’s facilities does not, without an assignment, transfer inventorship.

Application.

1. It may be contended that **using the university’s infrastructure** transfers ownership to the university. Mere use of facilities does not make the university the inventor or the owner; ownership turns on who devised the invention and on any assignment.
2. Here the **professor devised the invention in his spare time**; he is the true and first inventor. There is no written assignment to the university, and the invention was not made in the course of an assigned duty. The university’s provision of infrastructure, without more, gives it no title.

Conclusion.

The **professor is the true and first inventor** and entitled to the patent under **s.6**. The university cannot claim it merely because its infrastructure was used; only a written, registered assignment (**s.68**) — or an express service condition assigning inventions — would have given the university ownership.

P1.4 — `[Prob]` ‘A’ comes up with an invention and dies before filing for a patent. ‘C’, ’A’s laboratory assistant who knew about the invention, acquires a patent on it. Advise. *(Decoy: whoever knows the invention and files first owns it.)*

> *Asked: Mar 2024 (100), Aug 2024 (100) · Pattern: 100-only · ★★ · Notes: Unit 1 → Topic 2 / Topic 7 (Who may apply — s.6)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — is the lab assistant entitled?*
>
> *2. Rule — s.6: true and first inventor / legal representative; s.2(1)(y).*
>
> *3. Apply — kill the "knew it and filed first" decoy.*
>
> *4. Verdict — the patent belongs to A's legal representative, not C.*

Issue.

Where the true inventor A dies before filing and his laboratory assistant C — who merely knew of the invention — obtains the patent, is C entitled to it?

Rule.

1. Under **s.6**, an application may be made by the **true and first inventor**, his **assignee**, or the **legal representative** of a deceased person who was entitled to apply.
2. The **true and first inventor** (**s.2(1)(y)**) is the one who devised the invention — **not** someone who merely learned of it from another. A person who only *knew of* the invention is expressly not the true and first inventor.

Application.

1. It may be contended that **C, having known the invention and filed first, owns it**. First-to-file operates *among rival inventors*, not in favour of a person who did not devise the invention at all. C merely learned of A's work.
2. **A** devised the invention, so A was the true and first inventor. On A's death, the right to apply passes to **A's legal representative** under s.6, not to the assistant. C, who neither devised nor was assigned nor is A's legal representative, was **not entitled** to apply, so his patent was wrongfully obtained.

Conclusion.

C is **not entitled** to the patent. The right belonged to **A** and, on his death, to **A's legal representative** under **s.6**. C's patent, obtained by a person not entitled, is liable to be **revoked under s.64** (wrongful obtaining), and A's legal representative may claim it.

P1.5 — `[Prob]` 'X' has an invention relating to atomic energy and wants to obtain a patent for it. Advise. *(Decoy: it is novel and useful, so it must be patentable.)*

> *Asked: Apr 2022 (80), Jan 2026 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 6 (Patentable and non-patentable inventions — s.4)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — is an atomic-energy invention patentable?*

2. Rule — s.4 read with Atomic Energy Act, 1962.

3. Apply — kill the "novel so patentable" decoy.

4. Verdict — not patentable.

Issue.

May X obtain a patent for an invention relating to atomic energy?

Rule.

1. Under **s.4** of the Patents Act, 1970, **no patent shall be granted for inventions relating to atomic energy** falling within s.20(1) of the **Atomic Energy Act, 1962**.
2. This is an absolute subject-matter bar: it operates regardless of how novel, inventive or useful the invention is.

Application.

1. It may be contended that because the invention is **novel and useful** it must be patentable. Novelty and utility satisfy only the positive test of s.2(1)(j); they cannot rescue a subject-matter that **s.4** has fenced off entirely.
2. X's invention **relates to atomic energy**, so it falls squarely within s.4. No question of examining novelty or inventive step arises — the subject-matter itself is excluded from patenting.

Conclusion.

X's atomic-energy invention is **not patentable** under **s.4** (read with s.20(1) of the Atomic Energy Act, 1962). The advice is that no patent can be granted, however meritorious or novel the invention, and there is no point in examining the positive tests; control of atomic-energy inventions vests exclusively in the Central Government under the Atomic Energy Act.

P1.6 — `[Prob]` 'Z' has invented an antivirus software and wants to obtain a patent for it. Advise. *(Decoy: software is new and useful, so it is patentable as an invention.)*

Asked: Dec 2018 (100), Nov 2021 (80), Mar 2023 (80) · Pattern: both · ★★ · Notes: Unit 1 → Topic 6 (Patentable and non-patentable inventions — s.3(k))

ANSWER OUTLINE

1. Issue — is antivirus software patentable?

2. Rule — s.3(k) computer programme per se; copyright is the route.

3. Apply — kill the "new and useful so patentable" decoy.

> *4. Verdict — no patent; advise copyright.*

Issue.

May Z obtain a patent for antivirus software, or must it be protected some other way?

Rule.

1. Under **s.3(k)**, "a mathematical or business method or a **computer programme per se** or algorithms" is **not an invention** and cannot be patented.
2. Software is protected instead by **copyright** as a literary work under the Copyright Act, 1957. A software claim is patentable only where it produces a **technical effect** embedded in novel hardware — not where it is a computer programme as such.

Application.

1. It may be contended that because the software is **new and useful** it is patentable. Novelty and utility go only to s.2(1)(j); they cannot lift a "computer programme per se" out of the **s.3(k)** bar.
2. Z's antivirus is a **computer programme as such**, with no novel hardware or technical effect beyond the running of the program. It falls within s.3(k) and is not patentable.

Conclusion.

Z's antivirus software is **not patentable** under **s.3(k)**. The correct protection is **copyright** under the Copyright Act, 1957 (software being a literary work); Z should be advised to seek copyright rather than a patent.

P1.7 — `[Prob]` A neurologist invents a method of curing epilepsy by delivering mild electric shocks to the brain (alternatively, a surgeon invents a new process for surgery of limbs) and seeks a patent for the method. Advise. *(Decoy: the cure is novel and life-saving, so it deserves a patent.)*

> *Asked: Mar 2021 (100), Apr 2022 (100), Nov 2022 (100) · Pattern: 100-only · ★★ · Notes: Unit 1 → Topic 6 (Patentable and non-patentable inventions — s.3(i))*

> ***▤ ANSWER OUTLINE***
>
> *1. Issue — is a method of medical/surgical treatment patentable?*
>
> *2. Rule — s.3(i) bars methods of treatment.*
>
> *3. Apply — kill the "novel and life-saving" decoy; note the device distinction.*
>
> *4. Verdict — the method is not patentable.*

Issue.

May a doctor patent a **method** of medical or surgical treatment — curing epilepsy by brain stimulation, or a new process for limb surgery?

Rule.

1. Under **s.3(i)**, any **method of medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment** of human beings (or animals) is **not an invention** and cannot be patented.
2. The bar is on the **method of treatment**, not on apparatus: a new *device* used to deliver the treatment may itself be patentable if it satisfies s.2(1)(j) and escapes s.3.

Application.

1. It may be contended that the cure is **novel and life-saving**, so it deserves a patent. Novelty cannot rescue a subject-matter barred by s.3(i); the more brilliant the cure, the more clearly it is a method of curative treatment.
2. The claim here is to a **method of treatment** — curing epilepsy by electric shocks, or a process for limb surgery. That is squarely within **s.3(i)** and is refused however novel. (Had the doctor claimed a novel *machine* to deliver the shocks, that apparatus could be examined for patentability; the method itself cannot.)

Conclusion.

The **method of treatment is not patentable** under **s.3(i)**. The doctor may, if anything, seek a patent on a novel *device* used in the treatment, but not on the curative method itself.

P1.8 — `[Prob]` ‘X’ invents a machine capable of producing bricks from fly-ash; previously no method existed for making any commodity of utility from fly-ash. Is it patentable? *(Decoy: fly-ash is industrial waste, so nothing made from it can be patented.)*

> *Asked: Nov 2020 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 6 (Patentable and non-patentable inventions — s.2(1)(j))*

> ⚠ **DON’T CONFUSE**
>
> **Looks like:** the levitation-machine problem (P1.9, Unit 1) — both are “X invents a machine”. **How it differs:** the fly-ash machine **works** and is novel/useful, so it **passes** s.2(1)(j) and is patentable; the levitation machine defies natural law and is **barred by s.3(a)**. **Tell them apart by:** a machine that produces a real, useful result = patentable; a machine claiming to defy gravity/perpetual motion = s.3(a) refusal.

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — is the fly-ash brick machine patentable?*
>
> *2. Rule — s.2(1)(j) positive test; not on the s.3/s.4 list.*
>
> *3. Apply — novelty, inventive step, industrial application all met.*
>
> *4. Verdict — patentable.*

Issue.

Is X's machine, which for the first time makes useful bricks from fly-ash, a patentable invention?

Rule.

1. Under **s.2(1)(j)**, an invention is patentable if it is a new product or process with **novelty**, an **inventive step** (**s.2(1)(ja)**) and **industrial application** (**s.2(1)(ac)**).
2. It must also *not* fall within the **s.3 / s.4** exclusions.

Application.

1. It may be contended that fly-ash is **industrial waste**, so nothing made from it can be patented. The source material is irrelevant; patentability turns on whether the *machine and process* meet the tests.
2. Applying s.2(1)(j): the machine is **novel** (no previous method existed to make any useful commodity from fly-ash), it involves an **inventive step** (a genuine technical advance), and it has clear **industrial application** (mass-producing bricks). It is a machine and process, not a barred subject-matter under s.3 or s.4 — it is neither a method of treatment, nor software, nor contrary to natural law.

Conclusion.

X's fly-ash brick machine **is patentable**: it satisfies novelty, inventive step and industrial application under **s.2(1)(j)** and falls within no exclusion. X should be advised to file a patent application for the machine and process.

P1.9 — `[Prob]` 'Tech-illa' claims he has invented a machine that, if used as directed, can suspend a pebble in the air at a height of 50 feet above the earth. He seeks a patent. Advise. *(Decoy: if the machine were built it would be revolutionary, so it should be patented.)*

> *Asked: Jun 2019 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 6 (Patentable and non-patentable inventions — s.3(a))*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — is a machine defying gravity patentable?*
>
> *2. Rule — s.3(a) bars inventions contrary to natural laws.*
>
> *3. Apply — kill the "revolutionary if built" decoy.*
>
> *4. Verdict — not patentable.*

Issue.

May Tech-illa patent a machine that claims to suspend a pebble in mid-air against the force of gravity?

Rule.

1. Under **s.3(a)**, a **frivolous invention or one that claims anything obviously contrary to well-established natural laws** is not an invention and cannot be patented. A perpetual-motion or anti-gravity machine is the classic example.
2. Patentability also requires **industrial application** and a real working result (**s.2(1)(j)**), which an impossible machine cannot have.

Application.

1. It may be contended that the machine would be **revolutionary if it worked**, so it deserves a patent. But a claim that contradicts a settled law of nature (gravitation) cannot work and is exactly what **s.3(a)** excludes.
2. The claimed machine suspends a pebble in the air permanently against gravity — it is **contrary to well-established natural laws** and cannot have industrial application. It falls within s.3(a).

Conclusion.

The levitation machine is **not patentable** under **s.3(a)**: it is contrary to well-established natural laws and lacks any real industrial application. No patent can be granted.

P1.10 — `[Prob]` Company 'M' holds a patent for a novel medical device and wants to licence it to multiple companies for manufacturing and distribution. Can it do so? Advise. *(Decoy: a patent may be licensed to only one person at a time.)*

> *Asked: Mar 2024 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 10 (Transfer of patent rights — assignment and licensing)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — may a sole patentee licence to many companies?*

> *2. Rule — s.48 right to licence; non-exclusive licences (s.68).*
>
> *3. Apply — kill the "only one licensee" decoy.*
>
> *4. Verdict — yes, by non-exclusive licences.*

Issue.

May a sole patentee grant licences of the same patent to several companies at once?

Rule.

1. Under **s.48**, the patentee has the exclusive right to work the invention and, flowing from it, the right to **licence** the patent to others.
2. Licences may be **exclusive** (one licensee only) or **non-exclusive** (several licensees). A **sole** patentee may grant as many **non-exclusive** licences as he wishes; each licence must be in writing and registered (**s.68**).

Application.

1. It may be contended that a patent may be licensed to **only one person at a time**. That is true only of an *exclusive* licence; a patentee is free to grant multiple **non-exclusive** licences.
2. Company M is the **sole** patentee (no co-owner whose consent is needed under s.50). It may therefore licence the medical device to **multiple companies** by non-exclusive licences, each reduced to a written, registered document under s.68.

Conclusion.

Yes — Company M may licence its patent to multiple companies by granting **non-exclusive licences** (**s.48**, **s.68**). It should ensure each licence is in writing and registered; only if it grants an *exclusive* licence would it be barred from licensing others.

P1.11 — `[Prob]` A co-owner of a patented article assigns his share in it to a third party without the consent of the other co-owner. Decide the validity of the assignment. *(Decoy: a co-owner may freely deal with his own share.)*

> *Asked: Nov 2022 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 10 (Transfer of patent rights — s.50)*

> ⚠ **DON’T CONFUSE**
>
> **Looks like:** the “licence to multiple companies” problem (P1.10, Unit 1) — both are about dealing in a patent. **How it differs:** P1.10 is a **sole** patentee (free to grant non-exclusive licences); here there are **co-owners**, so **s.50(3) consent** is required and a unilateral assignment is void. **Tell them apart by:** one owner licensing = P1.10; a co-owner assigning “his share” = s.50 consent problem here.

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — is a co-owner’s assignment without consent valid?*
>
> *2. Rule — s.50(3) requires the other co-owner’s consent.*
>
> *3. Apply — kill the “free to deal with his share” decoy.*
>
> *4. Verdict — the assignment is invalid.*

Issue.

Is an assignment by one co-owner of his share in a patent, made without the other co-owner’s consent, valid?

Rule.

1. Under **s.50(2)**, each co-owner may **work the invention for his own benefit** without accounting to the others.
2. But under **s.50(3)**, “a licence shall not be granted and a share shall not be assigned by one of two or more” co-owners “**except with the consent of the other**.” A unilateral assignment of a share is therefore invalid.

Application.

1. It may be contended that a co-owner may **freely deal with his own share**. He may *use* the invention himself (s.50(2)), but **using and assigning are different rights**; assignment is expressly conditioned on the other co-owner’s consent.
2. Here the co-owner assigned his share to a third party **without the other co-owner’s consent**, in the teeth of s.50(3). The consent requirement is mandatory, so the assignment cannot take effect.

Conclusion.

The assignment is **invalid** for want of the other co-owner’s consent under **s.50(3)**. The third party acquires no title. Only an assignment made with the co-owner’s consent (and in writing and registered under s.68) would be valid.

P1.12 — `[Prob]` The Central Government uses a patented drug of a company at its public dispensaries without the permission of the patentee. The patentee intends to sue for infringement. Advise. *(Decoy: any unauthorised use of a patent is infringement giving an injunction.)*

> *Asked: Mar 2021 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 12 (Government use / acquisition — s.100)*

> ***▤ ANSWER OUTLINE***
>
> *1. Issue — can the patentee sue the Government for infringement?*
>
> *2. Rule — s.100 government use; compensation under s.103.*
>
> *3. Apply — kill the "any unauthorised use = injunction" decoy.*
>
> *4. Verdict — no infringement; only compensation.*

Issue.

Where the Central Government uses a patented drug at its public dispensaries without the patentee's consent, may the patentee sue for infringement and obtain an injunction?

Rule.

1. Under **s.100**, the Central Government (or a person authorised by it) may **use a patented invention for the purposes of Government**. Such use is lawful and is **not infringement**.
2. The patentee's remedy is **compensation** — agreed, or failing agreement settled by the High Court under **s.103** — not an injunction.

Application.

1. It may be contended that **any unauthorised use of a patent is infringement** entitling the patentee to an injunction. That ignores the statutory licence created by s. 100 for government use.
2. Supplying medicine at **public dispensaries** is a "purpose of Government." The Government's use is therefore authorised by s.100 and is not infringement, so no injunction lies. The patentee is, however, entitled to be **paid** for the use.

Conclusion.

The infringement suit **fails**: the Government's use is lawful under **s.100** and cannot be restrained. The patentee's only remedy is **compensation** for the use, agreed or settled by the High Court under **s.103**.

P1.13 — `[Prob]` Anand obtains a patent in India for his invention in gene therapy. Around six months later, Maggie, a U.S. citizen, shows that the same invention was already the subject of a U.S. patent with an earlier priority date. Advise on the fate of Anand's patent. *(Decoy: an Indian patent, once granted, cannot be disturbed by a foreign patent.)*

> *Asked: Jun 2019 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 13 (Revocation and surrender — s.64)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — can Anand's patent be revoked for a prior foreign patent?*
>
> *2. Rule — s.64 revocation for lack of novelty / prior claiming.*
>
> *3. Apply — kill the "granted so untouchable" decoy.*
>
> *4. Verdict — the patent is liable to revocation.*

Issue.

Can Anand's granted Indian patent be revoked because the same invention was already claimed in a US patent of earlier priority date?

Rule.

1. Under **s.64**, a patent may be **revoked** by the High Court (on petition or as a counter-claim) on grounds including that the invention was **not novel** (already publicly known or published anywhere in the world) or was **already claimed** in a patent of prior priority date (**prior claiming**).
2. Novelty is tested against publications and prior claims **anywhere in the world**, not only in India.

Application.

1. It may be contended that an **Indian patent, once granted, is untouchable** by a foreign patent. A grant is only *prima facie* valid; s.64 expressly allows revocation, and novelty is judged worldwide.
2. Maggie's **US patent has an earlier priority date** and claims the **same** gene-therapy invention. Anand's invention was therefore **not novel** and was **already claimed** before his priority date — both grounds under s.64.

Conclusion.

Anand's patent is **liable to be revoked under s.64** on the ground of **lack of novelty / prior claiming**, the earlier US patent being worldwide prior art. Maggie (a person interested) may petition the High Court, or raise revocation as a counter-claim if sued.

P1.14 — `[Prob]` A petitioner challenges s.126 of the Patents Act as unconstitutional, arguing it violates Article 19(1)(g) by barring non-registered persons from practising as patent agents. Decide. *(Decoy: any restriction on who may practise a profession violates Article 19(1)(g).)*

> *Asked: Mar 2021 (80), Nov 2021 (80) · Pattern: 80-only · ★★ · Notes: Unit 1 → Topic 15 (Patent agent — s.126)*

> ***▤ ANSWER OUTLINE***
>
> *1. Issue — is s.126 an unconstitutional restraint on trade?*
>
> *2. Rule — Art. 19(1)(g) subject to reasonable restrictions under Art. 19(6).*
>
> *3. Apply — kill the "any restriction is invalid" decoy.*
>
> *4. Verdict — s.126 is valid.*

Issue.

Does **s.126**, by reserving patent-agent work to registered agents (Indian citizens, 21+, science graduates who pass the qualifying exam), violate the **Article 19(1)(g)** freedom to practise a profession?

Rule.

1. **Article 19(1)(g)** guarantees the freedom to practise any profession, but **Article 19(6)** permits **reasonable restrictions** in the public interest, including **professional-qualification** requirements.
2. Under **s.126**, a patent agent must be a citizen of India, at least 21, hold a degree in science, engineering or technology, and pass the qualifying examination; **s.129** reserves patent-agent practice to registered agents.

Application.

1. It may be contended that **any restriction** on who may practise a profession violates Article 19(1)(g). But the right is expressly subject to reasonable restrictions under Article 19(6); qualification requirements are the paradigm example.
2. Patent drafting requires **technical competence**; a badly worded claim can lose a fortune. Requiring a science degree and an examination is a **reasonable, non-arbitrary** restriction protecting applicants from incompetent drafting — a legitimate public interest.

Conclusion.

Section 126 is constitutionally valid. The qualification requirement is a **reasonable restriction** under **Article 19(6)** and does not offend Article 19(1)(g); the challenge fails.

(Courts have struck down only arbitrary *excesses* in the agent-examination rules, not the s.126 qualification conditions themselves.)

P1.15 — `[Prob]` X applies for a patent on 01/03/2022. Y opposes the application, saying he made the same invention on 25/02/2022, though he never filed anything. Decide. *(Decoy: whoever invented first, even privately, defeats the applicant.)*

> *Asked: Mar 2023 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 17 (Opposition proceedings — s.25)*

> ⚠ **DON'T CONFUSE**
>
> **Looks like:** the anti-cancer post-grant opposition (P1.16, Unit 1) — both are s.25 oppositions. **How it differs:** here the objector opposes **before grant** (s.25(1), any person) and the issue is **first-to-file vs private prior invention**; P1.16 is a **post-grant** opposition (s.25(2), person interested, within 12 months). **Tell them apart by:** "opposes the application before grant" = s.25(1) here; "within a year of grant/ publication" = s.25(2) in P1.16.

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — does a private earlier invention defeat X's application?*
>
> *2. Rule — s.25(1) pre-grant grounds; first-to-file; prior public knowledge.*
>
> *3. Apply — kill the "invented first privately" decoy.*
>
> *4. Verdict — Y fails unless his invention was public before 01/03/2022.*

Issue.

Can Y defeat X's patent application by showing he privately made the same invention a few days earlier, though he never filed, published or used it?

Rule.

1. Under **s.25(1)**, **any person** may oppose a published application **before grant**, on grounds including **prior publication**, **prior claiming**, or **prior public knowledge or public use** in India.
2. Indian patent law follows **first-to-file**: a mere private earlier invention that was never published, used or claimed is **not** by itself a ground of opposition; only *public* anticipation defeats novelty.

Application.

1. It may be contended that **whoever invented first, even privately, wins**. The contention fails — priority is fixed by filing, and only public prior art destroys novelty.

2. Y made the invention on **25/02/2022 but never filed, published or used it**. A purely private, undisclosed earlier invention is not prior publication or prior public knowledge, so it does not defeat X's **01/03/2022** application. Had Y **publicly disclosed or used** the invention before that date, that anticipation would have destroyed X's novelty.

Conclusion.

Y's opposition **fails** on the facts: a private, unpublished earlier invention does not defeat X, who filed first. Y could succeed under **s.25(1)** only by proving his invention was **public** (published or used) before X's priority date of 01/03/2022.

P1.16 — `[Prob]` X is granted a patent for an invention he claims is an antidote for terminal cancers. Within a year of publication of the grant, Y, a member of the public, wishes to oppose it. Can he, and how? *(Decoy: once a patent is granted it can only be challenged by a High Court suit.)*

> *Asked: Jul 2025 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 17 (Opposition proceedings — s.25(2))*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — can Y oppose a granted patent, and how?*
>
> *2. Rule — s.25(2) post-grant opposition; person interested, within 12 months.*
>
> *3. Apply — kill the "only a court suit" decoy.*
>
> *4. Verdict — yes, by post-grant opposition if Y is a person interested.*

Issue.

Within a year of the grant's publication, may Y oppose X's granted patent, and by what mechanism?

Rule.

1. Under **s.25(2)**, **any person interested** may give **notice of opposition** to the Controller **at any time after grant but before the expiry of one year** from the date of publication of the grant.
2. The opposition is heard by an **Opposition Board and the Controller** on grounds mirroring s.25(1) — want of novelty, obviousness, non-patentable subject-matter (including a barred method of treatment under s.3(i)), insufficient disclosure, and the like.

Application.

1. It may be contended that **once granted, a patent can only be challenged by a High Court suit**. Post-grant opposition under s.25(2) is a distinct, cheaper route available for **12 months** after grant.
2. Y wishes to oppose **within a year** of publication of the grant. If Y is a **person interested** (for example a manufacturer or researcher in the field, or acting in a genuine public-health interest in the anti-cancer claim), he may file a s.25(2) notice; the Board and Controller will then decide. If X's claim is in truth a **method of treatment**, that is a strong ground (s.3(i)).

Conclusion.

Yes — Y may oppose the granted patent by filing a **post-grant opposition under s. 25(2)** within **12 months** of publication of the grant, provided he is a **person interested**. The matter goes before the Opposition Board and the Controller, not first to the High Court.
