



#KAFI-Legal

KAnalysis Friday Legal Insights

PATENT DRAFTING

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What is a Patent?

A Patent is an **exclusive right** under section 43 of the Patents Act, 1970 (**The Act**) provided to an inventor for a **new** invention that involves an **inventive step** and is capable of **industrial application**.



Patentability Criteria

For an Invention to be Patented, it must be:

1. Novel – (New to the world- i.e. should not be publicly disclosed anywhere)

For challenging Novelty:

---- All elements of your invention should be present in one prior art [Anticipation]

---- An invention lacks novelty only when all its features align completely with a prior disclosure.

---- It is important to note that a broad disclosure typically doesn't negate the novelty of specific examples within it, a specific disclosure can invalidate a broad claim encompassing it.

2. Inventive – (As per section 2(1)(j) of the Act, inventions which are non-obvious to a person skilled in the art)

What makes the Invention Obviousness

- Combination of one or more Prior art [Patent + Non-Patent Literature NPL]
- Routine/ Obvious design choice – Motivation to combine the disclosures of the Prior Art.
- Predictable results [No technological advancement]

Factors that determine Non-Obviousness

- Long- Felt need to address the problem in the filed
- Technological Advancement
- Evidences of Commercial Success

3. Industrial Applicability

Under section 2(1) (ac) of the Act, an invention must be capable of Industrial application, in relation to an invention, means that the invention is capable of being made or used in an industry.

4. Subject Matter Eligibility

Section 3 of the Act, defines what are not inventions- The section includes section 3(a)-(p) subsections that cite:

- Scientific principle or abstract theory
- New property or use of a known substance
- Mere admixtures (as opposed in synergistic mixtures) and processes thereof
- Mere arrangement or rearrangement of known devices each functioning independently of one another in a known way
- Method of agriculture or horticulture
- Treatment of human being, animals including diagnostic methods
- Plants and animals in whole or any part thereof
- Essentially biological processes
- Mathematical or business methods, computer programme per se or algorithm
- Literary, dramatic, musical or artistic work
- Method of playing games

Anatomy of a Patent

Under Section 10 of the Act, A patent specification should include the following

1. Title
2. Field of Invention
3. Background of the Invention
4. Summary of the Invention
5. Brief Description of Drawings
6. Detailed Description of Drawings
7. Claims
8. Abstract
9. Drawings

Patent Drafting

Patent Drafting involves gathering information about the invention, conducting prior art searches, and then drafting the application. A patent draft contains the following:

Title

- A concise statement summarizing the essence of the invention
- Should not be more than 15 words

Field of the Invention

- Should indicate the general art in which the invention pertains
- Should specify the area of application/ industry relevant to the invention

Background of the Invention

- Set the stage for understanding the invention's significance and the environment within the relevant technical field.

Summary of the Invention

- The summary provides a condensed version of the invention
- Draws from the claims but highlights the broader context and significance of the invention

Brief Description of Drawings

- The drawings aid in the understanding of the invention. The written part includes referral numerals that highlight the features of the invention.

Detailed Description of Drawings

- This provides a detailed description of the inventive technology referencing specific features depicted in the drawings
- Should disclose the best method to perform the invention

Claims

- Define the Legal Boundary of what is protected by the patent
- An application must contain one or more claim

Abstract

- A brief summarization of the invention
- Should not exceed 150 words
- Provide technical information about the Invention

[A Sample Patent- Click](#)

THANKS!

Do you have any questions?

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