

**ASSIGNMENT On Patent Act- 2003**

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Nurunnahar Mazumder

Lecturer, School of Business & Economics

United International University

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**SUBMITTED BY:-**

|  |  |  |
| --- | --- | --- |
| NAME | ID | COMPLETED |
| Jannatul Dilruba | 114 131 015 |  |
| Prossenjit Kumer Podder Shipon | 114 131 054 |  |
| Md. Humayun Uddin. | 114 131 056 |  |
|  |  |  |
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**INTRODUCTION**

**PATENTS**

In England grants of monopoly rights to exploit an invention by the inventor date back to the Elizabethan (Queen Elizabeth I) period. It was the right of the sovereign to make such grants by issuing Letters Patent. The introduction of any new manufacture was rewarded by grant of a monopoly right over the manufacture to the inventor for a certain period of time. This device was adopted for encouraging introduction of new arts and thereby to promote welfare of the state as a whole. Certain abuses of the general power of granting monopolies emerged in England and in order to check these abuses and limit monopolies already granted and to define in what circumstances monopolies may be granted by the sovereign, the Statute of Monopolies was passed in 1623. This Statute was the basis on which all subsequent laws in England and her colonies including the Indian Sub-continent were passed.

In England, the patent office was established in 1853. Subsequent legislations on patent are the Patents, Designs and Trade Marks Act, 1883, Patents and Designs Act, 1907, Patents Act, 1949, Patents Act, 1977 and Copyright, Designs and Patents Act, 1988.

In the Indian Sub-continent, the Patents and Designs Act was enacted in 1911 mainly on the basis of the principles laid down in the Statute of Monopolies, Patents, Design and Trade Marks Act, 1883 and Patents and Designs Act, 1907. The Patents and Designs Act, 1911, is the law in force in Bangladesh on patents and designs.

The laws relating to patents and designs have, therefore, been consolidated in a single enactment in Bangladesh, namely, the Patents and Designs Act, 1911. The same establishment, namely, the patent office set up under section 55 of the Act and the Controller of Patents and Designs and his staff appointed under the same section of the Act by the Government administer all matters relating to both patents and designs. The Act is divided into three parts. In part I laws relating to patents, in part II laws relating to designs and in part III general provisions have been included. In some countries, two separate acts prevail for patents and designs respectively. In India, a separate Patents Act was enacted in 1970 and the provisions relating to designs continue to be governed by the provisions of the Patents and Designs Act, 1911, and for this purpose suitable amendments by way of omission, addition, substitution etc. were made in the Patents and Designs Act, 1911, by the Patents Act, 1970 (Act 39 of 1970). In Bangladesh, we have been implementing the provisions relating to both patents and designs under a single enactment and through a single establishment since 1911. In Bangladesh, inventions are not many and as such, a single establishment can conveniently deal with both patents and designs. The World Intellectual Property Organization (WIPO) also recommends that the patent office may also look after matters relating to designs (see WIPO General Information, page 15). In that case, it will be convenient to keep the provisions relating to both patents and designs in one enactment as in the present Act. If the provisions relating to patents and the provisions relating to designs are made in a single enactment, the administering authority who will, as we have proposed above, enforce the provisions relating to both patents and designs, will feel convenient if he finds the provisions relating to both the matters in a single Act rather than in separate Acts.

Since enactment of the Patents and Designs Act, 1911, the concepts of patents and designs have undergone enormous development through decisions of courts around the world. In addition, a large number of international conventions have been adopted recommending enactment of uniform laws on intellectual property including patents and designs. Some of these conventions are: International Convention for the Protection of Industrial Property, Convention on the grant of European Patents (adopted in Munich, 5 October, 1973), Convention for the European Patent for the Common Market (adopted in Luxembourg, 15 December, 1975), Patent Co-operation Treaty (adopted in Washington, 19 June, 1970), Paris Convention for the Protection of Industrial Property, 1967, known as the Paris Convention, and the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, known as the TRIPS Agreement. The present Act is required to be updated in order to give effect in this country to certain international treaties on patents and designs, particularly to those to which Bangladesh is a State-Party. As such, we propose to substitute the present Act by proposing a new enactment instead of suggesting amendments to the present Act.

**POLICY FACTORS**

There are various policy factors that influence the scope of Patent law in Bangladesh.

**1) *Knowledge Transfer and a move to knowledge based economy:***

A robust and thriving patent regime may facilitate a cyclical innovative cycle from the entrepreneurial society to the saturated Bengali intellectually vibrant academy and cultural institutions, an incentivized and structured procedure forth from labs to the manufacturing floor, from art institutes to textiles, from the new programs and research chairs at universities such as the Asian University for Women to the average consumer in the rural or developed areas. “The new government policy needs to adjust to a “total knowledge policy,” Gurry, said, starting with education, which is the first step before getting to the commercialization of knowledge and then using IP to convert this knowledge into commercial assets. 2

With IP culture the role of universities is also growing with more technology transfer offices within universities and national legislation being enacted in many countries to encourage transfer of knowledge from universities to the productive sector. Gurry said. Id. IP is “the space in which all countries would like to compete,” he said. “Nobody wants to compete on the cost of labor and not everyone can compete on the basis of physical resources, so the value added by the intellect, essentially, is the space which is available to all countries in which to compete.” Id.

Therefore with a thriving and carefully designed and enacted Patent Act, Bangladesh would be positioned to compete globally with the faster dissemination of knowledge, research and expertise and heightened innovation in a rapidly developing nation.

**2) *Patent law in Bangladesh may illuminate innovation, entrepreneurship and* *competition****.*

With a growth in the IP there may be a rush to properties excellent patentable mechanisms that may spring forth the next microfinance, climate change, and community based water purification, and clean energy or food safety tool. Surging towards development, this may also create new jobs. Patenting and monetizing inventions will enable access to further research funds. Additionally confident entrepreneur-inventors would skillfully translate their knowledge to commercial gain through the patent system, this may prevent intellectual and capital flight and further enhance local intellectual and innovative output. The local industries may be influenced through the competitive drive to provide goods, services and products to invest in research and give back to community under a mutually beneficial patent regime. This may be the birth of excellent public/private partnerships.

**3) *Integration into the global marketplace of ideas.***

Bangladesh would further enhance in its international image as an intellectual property based and empowered nation and this would add further value to the ideas that may solve global issues. Bangladesh would thus possess a strong foundational pillar for healthy growth and development in the information age. The WIPO has released its first report in what is expected to be a series of publications seeking to explain, clarify and contribute to policy relating to intellectual property. In its debut report, WIPO presented figures that show a growing global demand for patents, a soaring increase in licensing and royalty fees revenues, and an increase in low and middle-income economies’ share of global spending on research and development.3

**4) *Public awareness of stakeholders.***

The growth of modern Bangladesh may be nourished in the powerful cooperation of the beneficiaries of an innovation and development focused Patent Act. This may be achieved through an initial focus on community involvement as a well-developed approach to awareness rising. Various stakeholders are critical, including,

1. Educational policy makers: The new generation raised in the post telecom era are versed in IP language, they understand the value of IP, and would like to see the country meet the Millennium Development Goal’s, and thus would be well positioned to understand and exploit the information and IP globalized world.
2. Trade bodies and industry: Members of trade bodies such as the Chamber of Commerce as well as multinationals are aware of the value of their IP and seek further to enhance assets through commercially attractive IP legislation.
3. Scientific community/institutions: Research in consumer product/ pharmaceuticals/ university labs must be included in the policy formation and negotiation. This would

ensure rapid partnerships in innovations and output with other stakeholders in the IP laws.

d) Non-Governmental institutions (NGO’s): The Legislation must be designed to ensure access for indigent and vulnerable groups therefore NGO involvement in shaping the legislation is very critical.

**5) Foreign Direct Investment:**

With a healthy IP enforcement system and legislation in place, there may be an increase in FDI into the country with additional support from international trade and exports organizations sanctioning a push towards including IP Bangladesh into the globalized finance streams. Multinational company decision makers, cross border lenders and legal counsel versed on the blossoming IP climate will invest with confidence if they believe that their output would be protected against infringement and garner additional IP value.

In the light of recent global financial turmoil, adverse foreign policy implementations such as the Stop Online Piracy Act (SOPA) in the US would be prevented if developing countries are perceived to value and adhere to IP laws. Additionally more research and studies should be carried out long term IP benefits in terms of FDI, Peru also proposed that “studies be carried out to measure the real impact of development on legislation concerning enforcement measures (increased sanctions or sentences, the establishment of regular procedures, etc.), as well as their implementation by the authorities as a part of their efforts to reduce piracy and counterfeiting.” 4

**6) Tailoring of IP Bangladesh:**

Bangladesh must seize the excellent opportunity to create dynamic hybrid, multifaceted systems, leveraging and learning from mistakes and successes of other relevant patent regimes such as India and the US. Bangladesh would thus be able to design the patent system most geared towards economic and social development by establishing clear development and innovation focused patentability criteria. It is also crucial to determine how strong the current system is in place in order to harness the strengths while designing the future legislation. A nuanced and thoroughly researched grasp of the goals would determine the standards and scope of patentability.

It is also important to set up a strong system with judicial precedent, as has been the case in India, Patent litigation in India has grown considerably and has led many Indian firms to enforce or oppose patents. In general, the awareness about patents and its commercial exploitation is being increasingly used by companies in formulating competitive strategy. As a result, an increased number of patent disputes are landing in courts, playing a very important role in ultimately resolving the disputes and interpreting the law. 5

It is also important to determine the scope of governmental property rights and thus defining the system and vision for development at the outset. 6

**7) IP funding from global institutions:**

IP funding from global institutions should be harnessed. It is an optimal yet short window of opportunity for Bangladesh to fly alongside the spurt of development in this area of the law occurring with the least developed countries around the world. By promoting and supporting a distinguished and high quality patent regime, Bangladesh may have an impact as an example in the universe of global IP standard setting.

It is also a tremendous boast for Bangladesh to harness WIPO resources such as the IP services that provide development assistance to developing countries. This would encourage dialogue and standard setting and policy dialogue and negotiations with WIPO. This would ensure that the patent regime is strong so as to withstand validity attacks from other countries. “Taking maximum advantage of modern information and communications technology, including the establishment of common technical and software standards for electronic filing and processing of PCT applications;” .7

These factors are among a few that may bear witness to Bangladesh meeting the MDG’s on the basis of a powerful Intellectual Property law.

**ACT SUMMARY**

A company’s ability to buy and sell property is essential to its long-term life and vitality. Although it does not take up physical space, too much intellectual property can burden a company, directing limited funds towards maintaining registrations, defending against third-party claims, or creating and marketing a final product. Selling unused or surplus intellectual property can have an immediate positive effect on a company’s finances, generating revenue and decreasing costs. When it does come time to grow a business, companies looking to purchase property (including patents and other inventions) to support their growth must be sure that the seller does, in fact, have title to the desired items. A properly-drafted patent assignment can help in both circumstances.

A patent assignment is the transfer of an owner’s property rights in a given patent or patents, and any applications for such patents. These transfers may occur on their own or as parts of larger asset sales or purchases. Patent assignment agreements provide both records of ownership and transfer and protect the rights of all parties.

**MERIT AND DEMERIT OF PATENT ACT**

A patent is a set of exclusive rights granted by a state or national government to an inventor or assignee for a limited period of time in exchange for the public disclosure of an invention. A patent is a form of Intellectual Property (IP) which encourages the economic and technological development by rewarding intellectual creativity. It is very important to know both the advantages and disadvantages before applying for a patent. Below the line we discuss –

**Merit:**

1. A patent gives the inventor the right to stop others from manufacturing, copying, selling or importing the patented goods without permission of the patent holder.
2. The patent holder has exclusive commercial rights to use the invention.
3. The patent holder can utilize the invention for his/her own purpose.
4. The patent holder can license the patent to others for us. Licensing provides revenue to business by collecting royalties from the users.
5. The patent holder can sell the patent any price they believe to be suitable.
6. The patent provides protection for a predetermined period (20 years) which keeps your competitors at bay.
7. Patents are partially responsible for advancements in medical science, biotechnology, drug chemistry, computers etc.
8. Patent reward inventors with the advantages and hence, creates bigger and better discoveries.

With these benefits come certain drawbacks. Patents provide plenty of merit but are provided alongside certain conditions. These conditions can sometimes prove to be disadvantages.

**Demerit:**

1. A patent is an exclusive right provided to a patent holder in exchange for the public disclosure of their invention. A full description with claims is published and can generally be viewed by anyone with the internet including your competitors.
2. After the exclusive patent period (20 years) has passed, other individuals or companies can freely use the invention without any permission from, or paying royalties to the inventor.
3. Applying for patent can be a very lengthy, time consuming process.
4. Cost of patent filing may be surpassed the actual financial gains. If a patent is to be filed further in different countries, then again the cost increases. After the patent grant, annual fees should be paid to the respective patent offices, otherwise the patent period may lapse.
5. Taking action against infringement is costly.
6. A patent can act as a deterrent, making defense unnecessary.
7. Sell or transfer technology will be severely hindered if you don’t invent patent; indeed, without intellectual property (patent) rights.

The patent system has its own benefits but also has its flaws. It is in place to provide incentive to those pursuing technological advancement and creativity with the conditions of invention disclosure and time limitation.

**OVERCOME OF PATENT ACT**

Patent act contain technological information that is often not publish in any other form of publication, covering practically every field of technology. Patent is a vast store of easily accessible human knowledge. The information contained in patent documents can be very useful to researchers, entrepreneurs, and many others, helping them:

1. Avoid duplication of research and development work.
2. Build on and improve existing products or processes.
3. Assess the state-of-the-art in a specific technological field, e.g. to get an idea of the latest developments in this field.
4. Evaluate the patentability of inventions, in particular the novelty and inventiveness of inventions with a view to applying for patent protection domestically or abroad.
5. Identify inventions protected by patents, in particular to avoid infringement and seek opportunities for licensing.
6. Monitor activities of potential partners and competitors both within the country and abroad.
7. Identify market niches or discover new trends in technology or product development at an early stage.

There are numerous conditions that must be met in order to obtain a patent and that are:

1. The invention must show an element of novelty; that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called “prior art”.
2. The invention must involve an “inventive step” or “non-obvious”, which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field.
3. The invention must involve an “inventive step” or “non-obvious”, which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field.
4. The invention must be disclosed in an application in a manner sufficiently clear and complete to enable it to be replicated by a person with an ordinary level of skill in the relevant technical field.

**CONSIDERATION OF PATENT ACT**

Patent consider invention for protecting the act. Below the line discuss the consideration:

1. Exclusive rights: Patents provide you with an exclusive right to prevent or stop others from commercially exploiting an invention for twenty years from the date of filing of the patent application.
2. Return on investments:Having invested a considerable amount of money and time in developing innovative products, through exclusive patent rights, you may be able to establish yourself in the market as the pre-eminent player and to obtain higher returns on investments.
3. Opportunity to license or sell the invention: If you choose not to exploit the patent yourself, you may sell it or license the commercialization of the patented invention to another enterprise, which could then be a source of income for your company.
4. Increase in negotiating power: If your company is in the process of acquiring the rights to use the patents of another enterprise through a licensing contract, your patent portfolio will enhance your bargaining power. That is to say, your patents may prove to be of considerable interest to the enterprise with which you are negotiating, and you could enter into a cross-licensing arrangement where, simply put, your enterprise and the other agree to license respective patents to each other.
5. Positive image for your enterprise*:* Business partners, investors and shareholders may perceive patent portfolios as a demonstration of the high level of expertise, specialization, and technological capacity within your company. This may prove useful for raising funds, finding business partners and raising your company’s market value.

**OBJECTIVES OF PATENT ACT**

Intellectual Property purposes a general approach to patent policy which includes four main objectives.

1. The first objective is to minimize liability for patent infringement to third parties. To achieve this objective, the firm should be aware of patents owned by competitors and obtain patents covering competitors’ activities as a deterrent to being sued by those competitors.
2. A second objective is to obtain patents for technological advancements which are already being developed within the business. By obtaining, the business can leverage additional value from his investment, thereby increasing the value of the business.
3. A third objective is to obtain patents in order to strengthen the business position in dealings with third parties. The owner of a patent covering the proposed standard is in a better position to utilize the standard technology than another business with no patent.
4. A fourth objective is to use patents as a source of income for business. The income could be substantial, greatly increasing the business profit margin or it could be more modest, merely offsetting the cost of a patent.

**CONCLUSION**

Intellectual Property (IP), especially patents may be the cornerstone for innovation and development, currently in Bangladesh, the Patents and Designs Act, 1911, enacted under British times still stands as current law. In 2004, a new draft of Patents and Designs Act, 2003 is finalized by the Law Commission of Bangladesh in cooperation with World Intellectual Property Organization (WIPO), which is under process to place before the Parliament1.

It is important for policy makers as well as stakeholders to comment and frame the legislative process of bringing the Bangladesh Patent act up to World Intellectual Property Organization (WIPO) standards, as it is a critical foundation for development. Thus various stakeholders must influence shaping the rights, framework and long-term vision of the Patent Law in Bangladesh.

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