

CHAPTER 1- Fundamentals of Patent Law

1.1 Objective

The objective of this chapter is to give an understanding of patent law fundamentals. It gives an insight into evolution of patent law, objectives of patent law and patentability requirements.¹

1.2 Introduction

A patent grants exclusive rights over an invention for a limited period of time to an inventor in exchange of full disclosure of his invention. The objective of the patent system is to promote the progress of science and technology for public benefit. It achieves this objective by granting exclusive rights to inventors. Through grant of exclusive rights, the patent system provides the incentives to invent, invest, design around and disclose, which encourages creation of inventions and their utilization for public benefit.

1.3 Evolution of the patent system

The concept of patent is not of recent origin but has developed over a period of time. In the year 1323, a German engineer was granted the first known privilege for the construction of a model grain mill, which could cater the storage needs of entire Venice. In the early 14th century, certain special privileges were requested by a section of water millers who had a unique set for the purpose of using it before mining. The grant of those special privileges to those water millers can be taken as marking the birth of the patent system. The first patent law in the sense of a promise of exclusive rights to inventors was enacted in 1474 by the Republic of Venice. Such enactment was supposedly the consequence of a long war between Venice and the Turks where Venice lost most of its trading empire in the eastern Mediterranean and as a result, had to refocus on manufacture than trade. Further, when the trade relations between Venice and East weakened, Venice adopted a number of measures to establish and maintain a preeminence in manufacture including law prohibiting emigration of skilled artisans and the export of certain material, while at the same time encouraging the immigration of skilled workers from other countries, for example by a tax holiday for two years after their arrival in Venice.² The development of the Venetian system later influenced the development of the British and the French system.

During the reign of Elizabeth, England, which was then industrially less advanced, followed the footsteps of Venice by starting to encourage skilled artisans to migrate and develop new industries and trades in England. The encouragement was given in the guise of awarding patents, which were considered as a permission to practice new technology or trades, to such skilled artisans for having brought their new technology into England. Usually, such permissions were granted by local groups who were controlled by the crown and who held monopolies over particular industries. As England marched towards an industrially advanced territory, patents emerged as an instrument of industrial regulation. Patents came to be largely used as revenue generating means and tools for bestowing personal favors. Further, patents were extended to cover industries and trades already well established.

In 16th century the parliament of England enacted Statute of Monopolies. The Statute of monopolies excluded monopolies per se unless they came within the exception of Section 6. Section 6 of this statute can be regarded as laying the foundation of modern patent law. According to Section 6, the granting power of monopoly to inventions by the Crown was restricted to a period of 14 years. The statute laid down the condition that monopoly can be granted only for "any manners of new manufacture" to the "the true and first inventor".

¹ Author: Sorn Shekar Ramakrishna - soshekar@brainleague.com

² <http://www.india.com/Patents/USPatentHistory.html>, visited on August 28, 2010

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