

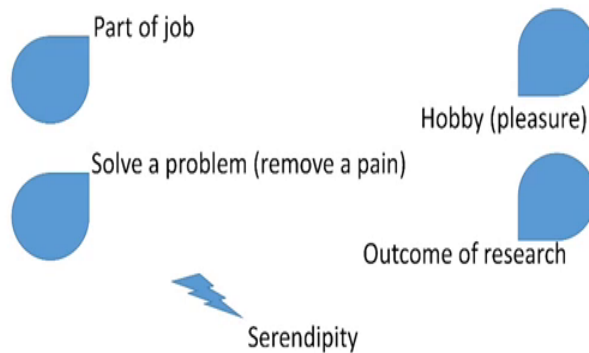
Patent Drafting for Beginners
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Lecture - 08
Why People Invent

Why people invent?

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Inventions have reasons







Inventions have their own reason. Inventions could prop up as a part of your job. It could come because of an outcome of your hobby; that is, the pleasure part of it. Or it could come as a result of removing somebody's pain. There is a problem to be solved, and you solve the problem. So, in an invention could come out of a problem that you solve.

Invention should could also come out of research, that is being done. And inventions can also be a result of serendipity. Things that are discovered by accident.

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Patenting has its own reasons

Not all inventions are patentable 
Not all inventions need patents 

 Utility (capable of industrial application)
 Mass production (replicability)

Upfront cost (cost benefit analysis)



Patenting has its own reasons too. Not all inventions are patentable. We know that there are other forms of intellectual property rights which protect, which protect ideas and expressions of ideas. And not all inventions need patents as well. Because they could be inventions which could be protected by other means of rights, or they could be inventions which need not be patented at all.

So, small improvements or small changes, which do not merit a patent grant need not be patented. So, not all inventions are patentable, and not all inventions need patents. The utility or what we call the usefulness of an invention is a requirement, which is referred in the Indian patents act as capable of industrial application, that the invention should be capable of industrial application. By which we mean that an invention should be capable of mass production. You should be able to make multiple copies of it.

So, before you patent, you would see whether there is a market for it; which means that patenting is a business proposition. There are upfront costs in patenting, which are sometimes substantial, and if you want to take the patent to multiple jurisdictions; say, you want to file patents all over the world, cover the major jurisdictions, then it will be an expensive process to do.

So, you or the inventor would normally look at the upfront cost, and the upfront cost is not just the filing cost, but it could also mean the cost that eventually occurs when a patent is granted. And the cost also it would if the cost will also include the upfront cost.

The cost of getting the patent granted; that is the prosecution cost. And also, the cost of maintenance, because patterns need to be kept for a 20-year period renewal fee which falls every year needs to be paid too.

So, patenting is something which you would do based on a cost benefit analysis. So, there is a cost benefit analysis you need to do before you decide whether something should be patented.

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New and Useful

- Old definition: "Manner of manufacture"
- "Vendibility test" – whether manufacturer results in a vendible or a sellable product
- Utility connects the invention to business
- Acts of infringement – manufacture, sale, marketing are acts of business (commercial activity)



Now, the earlier before we had a inventive step as a requirement. The inventive step requirement is the you can say it is the second requirement of patentability for something to be granted a patent.

Now, earlier before India introduced the inventive step requirement. Things used to be much simpler. They used to call it the new and useful requirement. Now the new and useful requirement, was centered the old definition was centered around a manner of manufacture. Now there is a host of cases from United Kingdom which tells us about what a manner of manufacturers, and they were able to accommodate the growth of technology, and the complexities it brought through by interpreting this phrase the manner of manufacture. And the codes also in England developed what is called the vendibility test. Whether manufacturer results in avendible or a saleable product.

Now, this had a direct connect with the fact that what you are inventing should be sellable. So, so just to show that patenting has its own reasons. It should also be factored whether the patenting efforts could actually result in revenue. Utility connects the invention to the business. Because once there is usefulness demonstrated, and it can be made in multiple copies, you can replicate the invention, why would you replicate an invention in multiple copies? Because there is a great demand in the market.

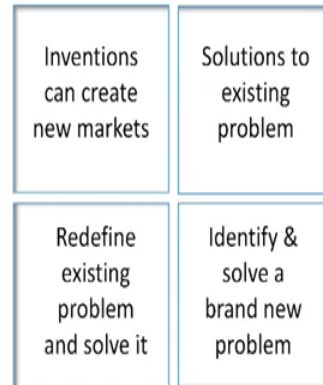
So, the utility part, or the capable of industrial application part of the patentability test is, what tells us that an invention could have a demand, and it brings the connect between patent law and business. So, it is a business call at the end of the day, whether invention should be patented, and a cost benefit analysis is or drawing a business plan to put it in another way, will be very important before taking a call on patenting.

Acts of infringement. This is one way to know that the connect between the patenting and business is that, the acts of infringement are manufacture as an act of infringement, if somebody else manufactures a invention that is covered by a patent, you have a right to stop that person. If somebody else sells a invention that is covered by a patent you have a right to stop that person. If somebody else markets an invention that is covered by a patent you have the right to stop that person.

So, your right to stop or is what we call an infringement. You can take action on an infringement. And all the acts of infringement are actually business activities. They are commercial activity. So, you will be able to see the connect between patenting as a business activity. Because since it is so inherently tied to business, it is a business call, or it is a call that an inventor has to take in investing money looking at whether there will be possible returns for the money that he invests.

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New industry or market



Now, whether patenting results in a new invention industry or a market. And there has been certain cases where, it has been inventions have been related to the creation of a new industry or a market. It may not be true now, but initially patents were granted if that invention would lead to the creation of a new industry or a market.

Now, inventions can create new markets, inventions can offer solutions to existing problems. Inventions can redefine an existing problem and solve it. And inventions can also identify and solve a brand new problem. Now this tells you that there is quite a lot of possibility in patent drafting. Because if you draft an invention as a solution to an existing problem, it would demonstrate technical advance what we had covered earlier, and it would also qualify your invention as a patentable invention.

If you redefine an existing problem and solve it; that is yet another yet another way to show that your invention involves an inventive step. Because and if you identify and solve a brand-new problem, again that is yet another way to show that your invention involves an inventive step.

Now, what is common in all these 3 things is that, there is an problem that is being solved by the invention. So, the problem that the invention solves could be critical, because that is one way you could get over a potential inventive step objection, that the patent office could raise that the invention lacks an inventive step, because it is obvious to a person skilled in the art.

So, when you say that there was a problem and your invention solved that problem, you could get over potential objections of inventive step, because the problem that you solved existed in the industry and no one else solved. Because you solved something which others couldn't do, you could argue that your invention was not obvious.