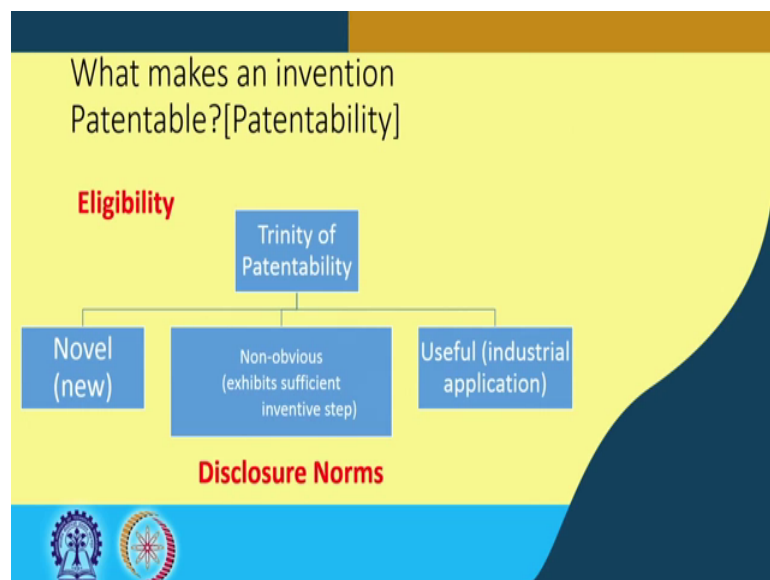


Patent Search For Engineers and Lawyers
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Rajiv Gandhi School of Intellectual Property Law
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Lecture - 05
Non- Obviousness

Welcome to my lecture on Patentability Requirement. In the last class we have seen the we have dealt with the issue of novelty and in this lecture I will be dealing with the Doctrinal Framework and the concept of Non-obviousness.

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Now we know from our last class, which is basically which we have seen that there are three different parameters which needs to be satisfied to get a patent protection and almost this has become a global feature. And this has also become an integral part of the Indian patent system.

Now, in the last class we have dealt with novelty and in today's class I will be looking at the non-obviousness Doctrine. And then I will be spending few words about the usefulness or dutiability understanding.

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The slide is titled "Inventive Step and Non-obviousness". It compares the Indian Patent Act, 1970 (Section 2(1)(j)) and the U.S.A. Section 103. The Indian definition states that an "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art. The US definition states that a patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made. The slide also features logos for Swamyam and other educational institutions at the bottom.

Inventive Step and Non-obviousness

India: Section 2 (1)(j) of Patents Act, 1970 U.S.A. Section 103

"inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

Now, the first thing any legal analysis starts with the legal provision and as you can see in your screen you can see there are two definitions. And the first definition is the definition of industrial in inventive step which is there in section 2 1 ja of the patent act our patent act. And you can see also the definition of obviousness or non obviousness which is being given in section 103 of the US patent law which is US code 35 section 103.

Now, whether these two are equal or not we will come to that, but let us look into the definitional parameter which has been set by the national statute. The domestic legislation of India actually section 2 1 ja of the patent act it says that very carefully we have to note. The inventive step means feature of an invention that involves technical advance as compared to the existing knowledge. Or there are two things either it should be actually in it involves a technological advance as compared to the existing knowledge or second thing having an economic significance or both and that makes the invention not obvious to a person skilled in the art.

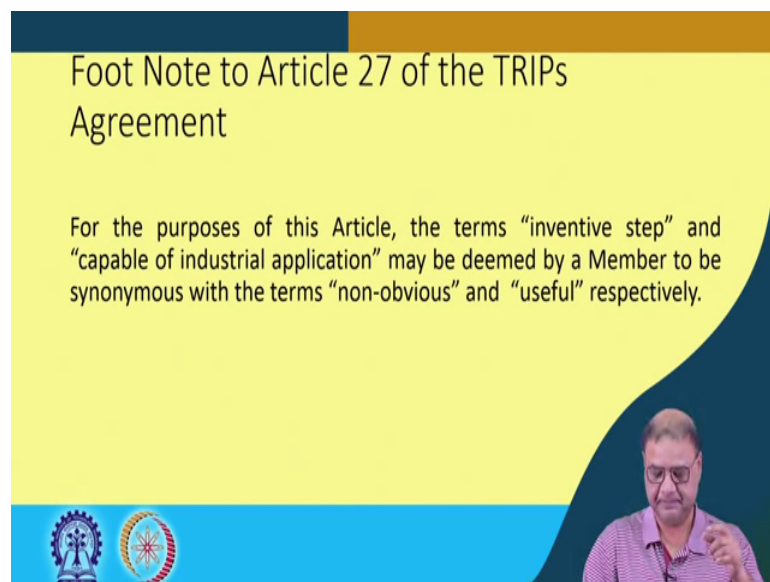
So, the definition makes it crystal clear either of these two factors a technical advancement or economic significance must be there, if both of them both of these elements are present there is no problem; but which is actually in a which must be there is this that it must be something which is non obvious to a person skilled in the art.

Now, come to the US understanding; the way we have used the term inventive step, US has used the term non obviousness or obviousness. Now the US statute which is corresponding to section 2 1 ja of the Indian statute section 103 it says, that a patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102.

So; that means, even if it is not actually, even if it is satisfying the criteria or novelty still patent can be denied. If the difference between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious, before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

So, we have see almost what is being what is inventive step in India, the same concept is actually an age old concept is considered to be the age old concept of non obviousness in USA; but there are certain subtle differences and in this class we will not be looking into those differences.

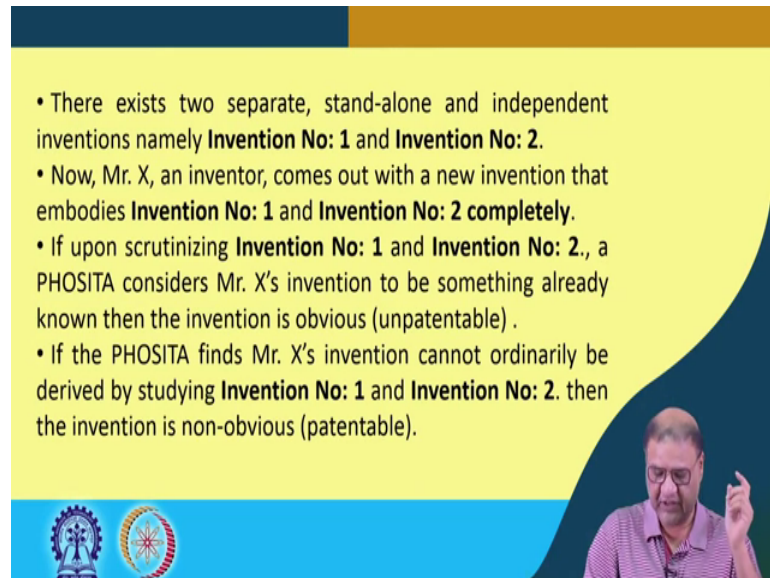
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Why? Because from where from we get the clue that we will not be making any distinction so far as this class is concerned. Because in my last class I have mentioned about Article 27 of the trips agreement and there is a footnote and I have actually shown you in this slide the footnote itself.

The footnote says that for the purpose of this article the terms inventive step and capable of industrial application may be deemed by a member; member means here the WTO member to be synonymous with the term non obviousness and useful respectively. So, for this class we are using the term inventiveness interchangeably with the term non obviousness.

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- There exists two separate, stand-alone and independent inventions namely **Invention No: 1** and **Invention No: 2**.
- Now, Mr. X, an inventor, comes out with a new invention that embodies **Invention No: 1** and **Invention No: 2 completely**.
- If upon scrutinizing **Invention No: 1** and **Invention No: 2**., a PHOSITA considers Mr. X's invention to be something already known then the invention is obvious (unpatentable) .
- If the PHOSITA finds Mr. X's invention cannot ordinarily be derived by studying **Invention No: 1** and **Invention No: 2**. then the invention is non-obvious (patentable).

Now what does this non obviousness means? See to be very precise this is actually a more complex enquiry than the novelty inquiry. And then we have seen that even there are attempts to make objective criteria so far as non obviousness is concerned, but it is very much subjective and it depends upon the person who is reading the prior arts.

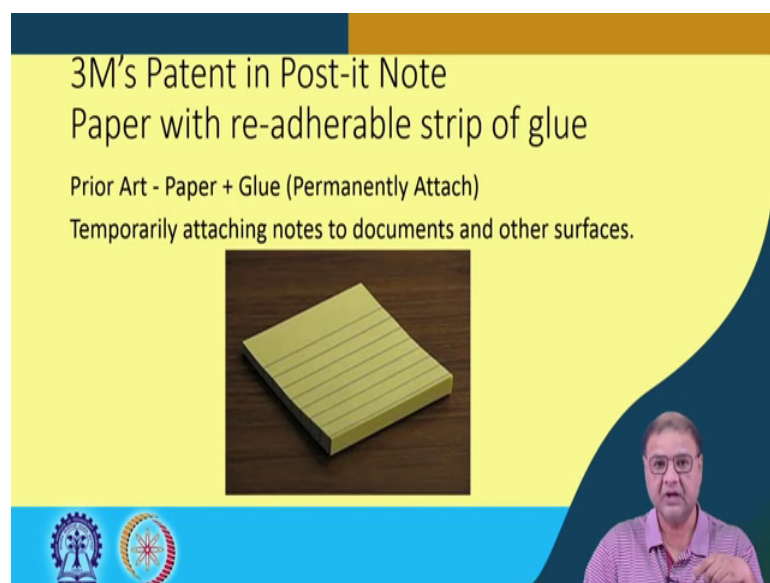
Now, we have seen in the last class that; so far when it comes to novelty all the claim limitations must be present in a single prior art. And there we have also learned that for the purpose of non obviousness enquiry, it is possible it is very much possible to combine prior art references.

Now, suppose there are two prior art; invention 1, invention number 1 and invention number 2. Now, a person comes out with an invention in fact, that invention in embodies all the elements of claimed invention 1 and invention 2. The question is this that, will it be an obvious invention or will it be an non-obvious invention?

Now, here we have seen in this statute as we have seen in the earlier side in the earlier class also this statute says that person having ordinary skill in the art and this the short form of this is PHOSITA. So, Mister PHOSITA is the main focus of patent law and we have to look into the prior art from the lens of Mister PHOSITA who is actually having the ordinary skill in the art.

That Mister PHOSITA is not actually an high level scientist nor he is an ordinary mechanic, he is in between these two. And this Mister PHOSITA would be looking at invention number 1 and Invention number 2 and if a Mister PHOSITA thinks that Mister X's invention to be something already known then the invention is obvious. But if mister PHOSITA thinks that the invention is it cannot be ordinarily deduced by combining invention number 1 and invention number 2, then the invention is non-obvious and thus it is patentable.

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Let us take a simple example, this is actually a common article which we use in our daily practice. See this is call based post it note, so we use a piece of paper and that can be pasted on any surface; that can be pasted as actually as a reference mark in a book which you have studied, it can also be pasted in a door where you can leave a note for somebody whom you could not see.

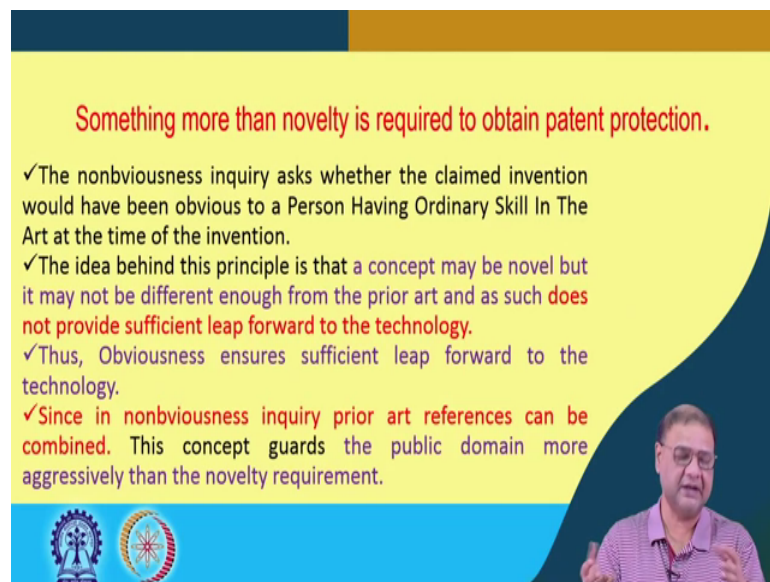
Now, to be very precise 3 M was holding a patent in respect of post it. Now, what are the two prior arts in this regard? The first prior art is actually we know about paper and

paper is known to us for centuries for thousands of years. And then we also know about glue because one if we use an ordinary glue to paste a paper on a surface it would be permanently actually, it would get permanently attached to that surface. And if we are trying to take a take it take that paper out, the paper would be destroyed it would be one would land up in tearing the paper.

But if we can make a glue and if that glue is actually a glue which is re-adherable; means we can who put it back and take it back, put it back and take it back. If that happens in that case actually it is the glue is something which is known, paper is something which is known; but this two prior art is not actually asking someone to make an invention where he can make a kind of a glue which is non permanent in nature. So, therefore, 3 M got a patent although the prior art was something where both were present.

So, a PHOSITA a person having ordinary skill in the art, Mister PHOSITA would never think about applying a glue in a paper for the purpose of making it actually a piece of note that can be pasted at any moment and that can be taken back at any moment.

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Something more than novelty is required to obtain patent protection.

- ✓The nonobviousness inquiry asks whether the claimed invention would have been obvious to a Person Having Ordinary Skill In The Art at the time of the invention.
- ✓The idea behind this principle is that a concept may be novel but it may not be different enough from the prior art and as such **does not provide sufficient leap forward to the technology.**
- ✓Thus, Obviousness ensures sufficient leap forward to the technology.
- ✓Since in nonobviousness inquiry prior art references can be **combined**. This concept guards the public domain more aggressively than the novelty requirement.

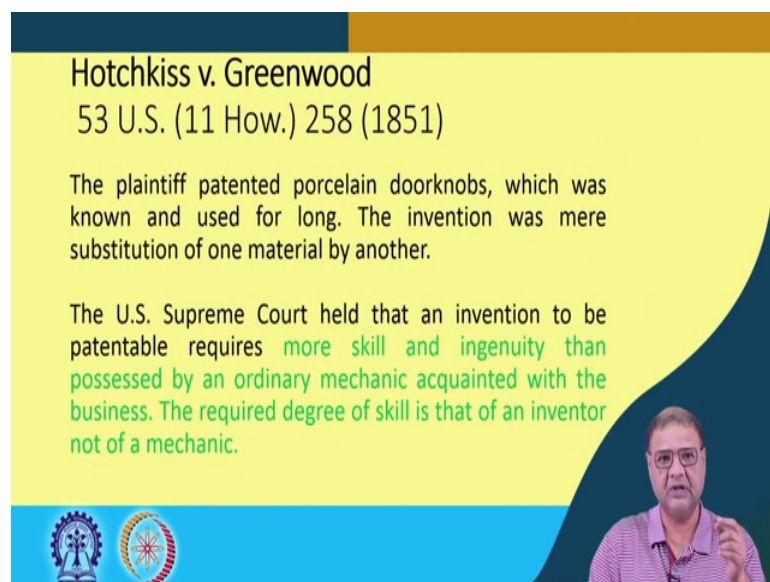
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Now, as we have, see there is something else more than novelty is required for the purpose of non obviousness understanding. And the idea behind this principle that a concept may be completely novel, but at that may not be sufficient enough to form the prior art as such does not provide sufficiently forward to the technology.

So, first of all see the purpose which non obviousness functions; what is the purpose which basically non obviousness does, it protects the public domain in a more robust, in a more comprehensive manner than the novelty doctrine. And we have seen that novelty doctrine in fact, it protects public domain; it ensures that something which is already in public domain no unscrupulous individual are take it back in his private domain in the form of patent.

But here since in non obviousness inquiry, we can actually combine different prior art references; therefore, it is protects the public it protects the member of the public in a more vigorous, in a more aggressive manner than the novelty requirement.

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Hotchkiss v. Greenwood
53 U.S. (11 How.) 258 (1851)

The plaintiff patented porcelain doorknobs, which was known and used for long. The invention was mere substitution of one material by another.

The U.S. Supreme Court held that an invention to be patentable requires more skill and ingenuity than possessed by an ordinary mechanic acquainted with the business. The required degree of skill is that of an inventor not of a mechanic.

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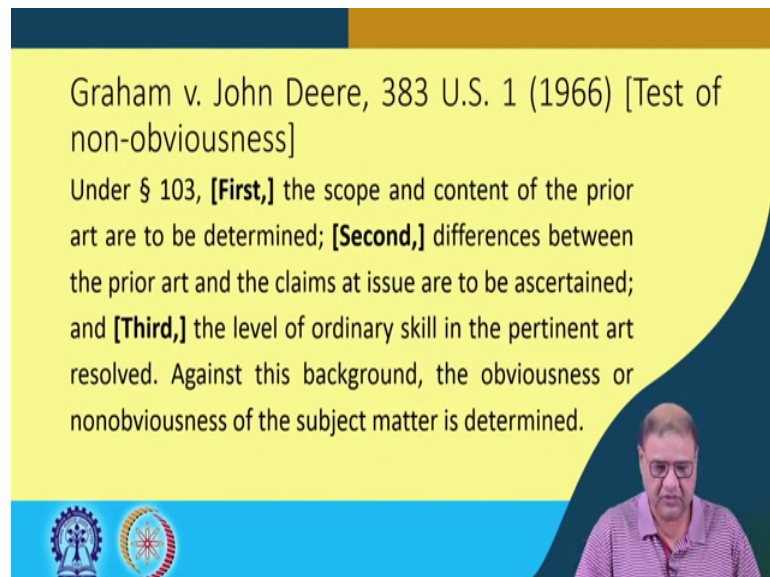
Now, in this regard we will get back to the first case law which is coming from the US, it is known as the case law is called the Hotchkiss versus Greenwood. What has happened in that case, we all aware of metal doorknob, this metal doorknob in this patent which was the subject matter of the dispute in this case this metal doorknob was replaced by a clay or a porcelain doorknob

And therefore question is this that yes, if someone is replacing a metal doorknob by a porcelain doorknob or clay doorknob; obviously, it is novel. But anyone who is having the knowledge of a doorknob he or she can actually use any other material. And in this case the supreme court of United States held, it held that actually in invention to be patentable it requires more skill and ingenuity than possessed by an ordinary mechanic

acquainted with the business [vocalized]. The required degree of skill is that of an inventor not of a mechanic.

So, here this skill which is required to make an invention patentable, not nearly because it is novel it is patentable it has to also qualify certain grade; the grade of not of a mechanic, but the grade of an inventor. So, that is what the crux of the issue that was discussed in Hotchkiss and at a later stage it become, in when the 1952 act was enacted in USA it became an integral part of the US patent system and we have seen section 103 of the US patent act.

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Graham v. John Deere, 383 U.S. 1 (1966) [Test of non-obviousness]

Under § 103, **[First,]** the scope and content of the prior art are to be determined; **[Second,]** differences between the prior art and the claims at issue are to be ascertained; and **[Third,]** the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

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So, now we will try to understand that what are the guidelines that needs to be followed while determining the question of obviousness or non obviousness of an invention. Now, in this regard the reference point is the seminal case of Graham Versus John Deere and company where the US supreme court based on the 1952 act; as we have seen that section 103 of the 1952 act it in fact, made non obviousness a part of the US patent statute and the interpretation comes up in this 1966 case.

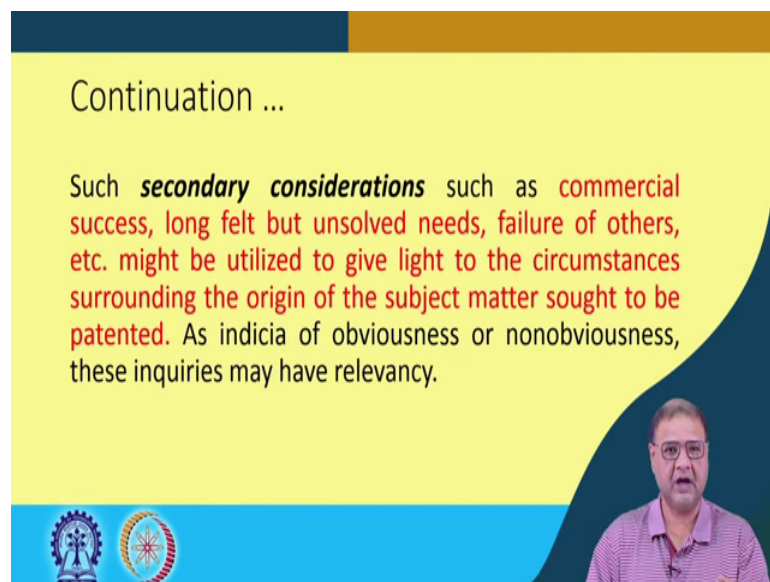
The first thing which needs to be considered is the scope and content of the prior art. We now know that so far as non obviousness is concerned prior art references may be combined; however, what are the different prior arts that can be combined?

See if we are allowed to combine all pre-existing prior art; if that case perhaps it would be very very difficult for a patent seeker to obtain a patent. So, then what are the prior arts that should be taken into consideration for the purpose of determining the obviousness or non obviousness that is the first thing which needs to be decided.

Then the second understanding is this that the differences between the prior art and the claims at issue are to be ascertained. So, the question is here that prior art combined in one hand and the claimed invention on the other hand; and now we will be comparing and contrasting these two things. And we will try to find out that what are the differences between this prior art and the claims which have been claimed by the patent seeker.

And then the most important question would be at last who is the PHOSITA for the purpose of looking at the prior art. The level of ordinary skill in the pertinent art is resolved and once these three elements are properly construed and constituted against this backdrop, against this understanding the obviousness or non obviousness of the subject matter has to be determined; and this still these principles are still are the governing principles in the US.

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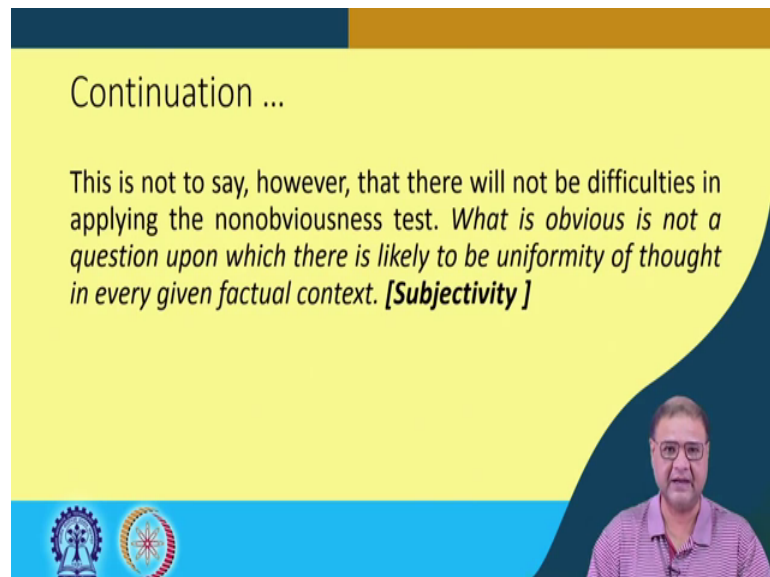
Such **secondary considerations** such as **commercial success, long felt but unsolved needs, failure of others, etc.** might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be **patented**. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Now, what has happened that in addition to that there are secondary consideration and what is the secondary consideration we will come to that little bit later. Now, such secondary consideration such as commercial success, long felt but unsolved needs, failure of others, etcetera must be utilized to give light to the circumstances surrounding

the origin of the subject matter sought to be patented. As indicators of obviousness or non-obviousness, these inquiries may have relevancy.

So; that means, see a *Mister PHOSITA* finds that the prior art is something which is defeating the patentability of the claimed invention. Still whether that claim invention is a commercial success; whether there was a market need for that and it is basically addressing a long felt market need all these may be still taken into consideration even if the *Mister PHOSITA* finds that it is something which is obvious. So, we will try to elaborate with the help of examples in later part of this lecture.

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Continuation ...



This is not to say, however, that there will not be difficulties in applying the nonobviousness test. *What is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context. [Subjectivity]*

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Analysis of the Test

- ✓ Scope and content of prior art is Determined.
- ✓ Differences between the prior art and claims is scrutinized.
- ✓ Level of ordinary skill in the art (PHOSITA) is ascertained.
- ✓ Obvious or not is determined.
- ✓ Secondary considerations are measured.





Now, so with this regard now, we have seen the analysis of the state test and this I have analyzed when we were trying to understand this test.

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KSR v. Teleflex, Inc., 550 U.S. 398 (2007)

In determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. **What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under §103.** One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims.

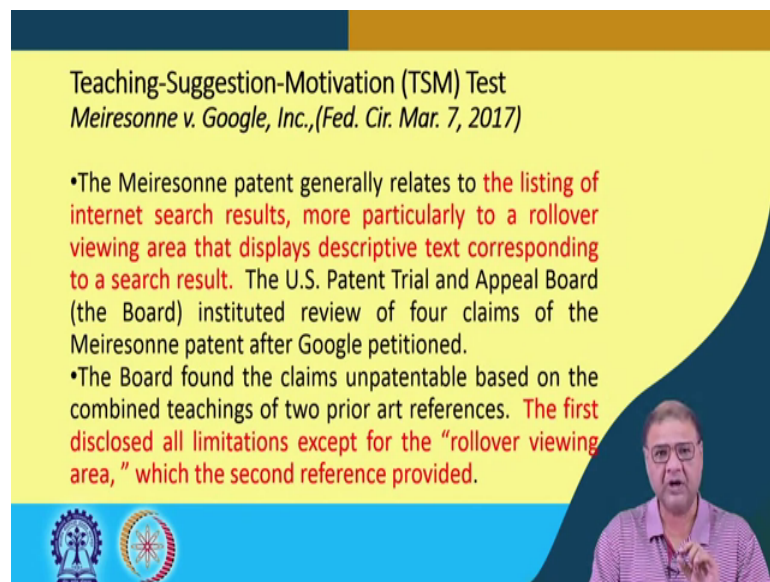


Now, the latest case law in this regard which is again coming from the US with this is with regard to certain pedal assembly whether those pedal assemblies are obvious or not. And then US Supreme Court again relying on these parameters which have been laid down in *Graham versus John Variant Company* and this is the operative portion of the judgment we look into the operative portion.

What it says that in determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. So, what matter is the objective reach of the claim, if the claim extends to what is obvious, it is invalid under section 103.

One of the ways in which a patent's subject matter can be proved obvious is by nothing there by now noting that their existence existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claim. So, now the question is this that here what matters is the objective reach of section 103 of the US patent act.

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Teaching-Suggestion-Motivation (TSM) Test
Meiresonne v. Google, Inc., (Fed. Cir. Mar. 7, 2017)

- The Meiresonne patent generally relates to the listing of internet search results, more particularly to a rollover viewing area that displays descriptive text corresponding to a search result. The U.S. Patent Trial and Appeal Board (the Board) instituted review of four claims of the Meiresonne patent after Google petitioned.
- The Board found the claims unpatentable based on the combined teachings of two prior art references. The first disclosed all limitations except for the "rollover viewing area," which the second reference provided.

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Now, what is the objective reach we will try to understand, but before that we need to understand two concept one is called the teaching-suggestion-motivation. So, this teaching-suggestion-motivation is basically a kind of guideline that how to combine prior art and how to use those prior art for the purpose of determining the question of obviousness or non-obviousness.

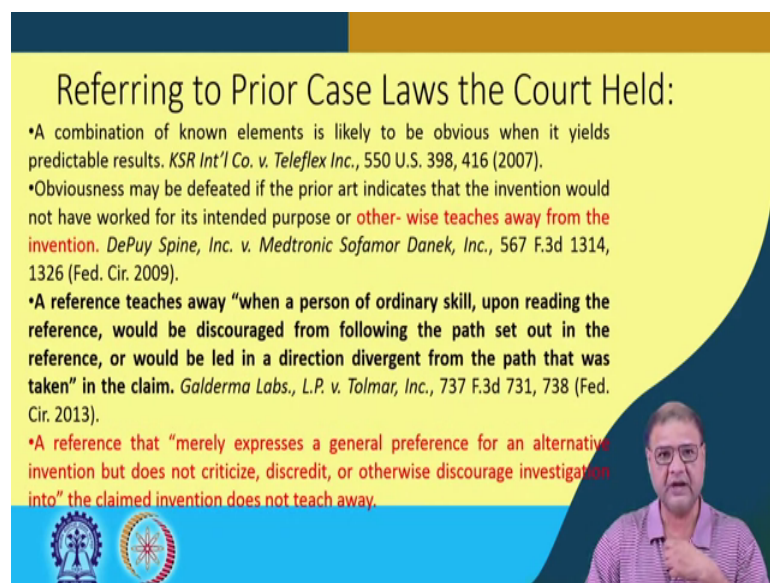
And at to be very precise, if after performing this kind of analysis, if the prior art is teaching away in that case there is the of the invention which has been claimed would be obvious. however, if the prior art combined together if it is teaching in see; that means, teaching in and teaching away are the two important factor in determining obviousness the question of obviousness or non-obviousness.

Now, let us look into a federal circuit decision per circuit code of decision which has come in 2017. Here there was a patent of listing suppose someone is searching internet and then the results are being listed. Now, there is a rollover area for viewing the displays and which is which display this rollover area actually it displays descriptive text corresponding to a search result.

Now, what has happened the US Patent Trial and Appeal Board that is the board constituted instituted review of four claims of this patent. When Google they objected to this, but this the issuance of this patent, the board found the patent trial and appeal board found that the claims are unpatentable because there are two prior art.

First of all a one of the prior art a disclose the rollover viewing area and whereas, the second actually second reference also the first reference was about search result the second reference was about rollover area. But all these limitations were not present in a single prior art references, but they were present in two different prior art references.

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Referring to Prior Case Laws the Court Held:

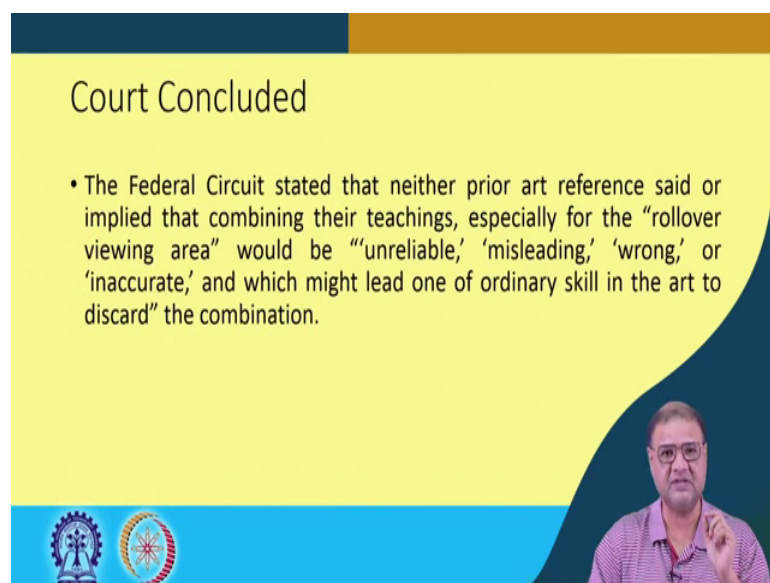
- A combination of known elements is likely to be obvious when it yields predictable results. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).
- Obviousness may be defeated if the prior art indicates that the invention would not have worked for its intended purpose or **otherwise teaches away from the invention**. *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1326 (Fed. Cir. 2009).
- A reference teaches away “when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken” in the claim. *Galderma Labs., L.P. v. Tolmar, Inc.*, 737 F.3d 731, 738 (Fed. Cir. 2013).
- A reference that “merely expresses a general preference for an alternative invention but does not criticize, discredit, or otherwise discourage investigation into” the claimed invention does not teach away.

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So, when it comes to this understanding the federal circuit code of appeal says, that they have quoted the prior precedents and then they said that they a combination of known element is likely to be obvious when it yields a predictable result, that is actually coating Teleflex. Then obviousness may be defeated if the prior art indicates that the invention would not have worked for it is intended purpose or otherwise teaches away from the invention.

So, if the prior art is teaching away from the invention it is obvious. And what is teaching away? The meaning of teaching away a reference teaches away when a person of again Mister PHOSITA reading the reference, would be discouraged from following the path of both set out in the reference, or would be would be led in a direction divergent from the path that was taken. So, a reference that merely expresses a general preference often for an alternative invention, but does not criticize, discredit, or otherwise discourage investigation into the claimed invention does not teach away, see does not teach away this is the principle.

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Court Concluded

- The Federal Circuit stated that neither prior art reference said or implied that combining their teachings, especially for the “rollover viewing area” would be “unreliable,’ ‘misleading,’ ‘wrong,’ or ‘inaccurate,’ and which might lead one of ordinary skill in the art to discard” the combination.

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Biswanath Prasad Radhey Shyam vs Hindustan Metal Industries, AIR 1982 SC 1444

- The old method of manufacturing utensils, particularly shallow dishes, was to turn scrap and polish them on some sort of headstock without a tailstock, **the utensils either being fixed to the headstock by thermoplastic cement or held in the jaws of a chuck fixed to the headstock.**
- **This system had potential risk to the workers as the utensils used to fly off from the headstock.**
- To introduce improvement, convenience speed, safety and better finish, Purshottam Dass, one of the partners of Hindustan Metal Industries, **invented a device and method for the manufacture of utensils, in 1951.**
- The invention was patented (No. 46368-51) under the then Indian Patent and Designs Act, 1911 (Old Act), on May 6, 1953 with effect from December 13, 1951.
- As assignee the plaintiff acquired the sole and exclusive right of using this method and means for the manufacture of utensils.

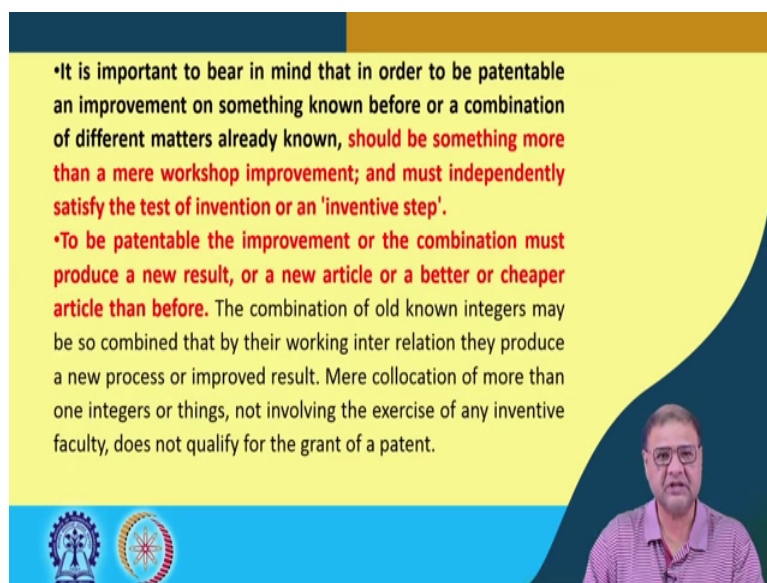
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Now, with this understanding, we will look into what is the scope in India. The scope in India is actually it has been laid down by the Supreme Court in the case of Biswanath Prasad Radhey Shyam versus Hindustan Metal Industries.

So, what was the what the it was actually a kind of method of making utensils and the utensils in order to polish an utensil one need heat to basically shallow dishes what we have to done the scrap and polish them on some sort of head stock. And how to fix that in utensil on a head stock? It is normally fixed either by a thermoplastic cement or held in the jaws of the chunk of the head steak.

Now, this is a risky thing because while trying to polish it; it may create a kind of it may fly away and it may hot the person who is doing and it can create accidents. In order to basically overcome this problem, the problem of actually the disc and the utensils flying away and heating somebody else; the inventor here in he has invented a device and method for manufacture of utensils which are safe and then a patent was granted.

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•It is important to bear in mind that in order to be patentable an improvement on something known before or a combination of different matters already known, **should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an 'inventive step'**.

•**To be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before.** The combination of old known integers may be so combined that by their working inter relation they produce a new process or improved result. Mere collocation of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent.

And the question is this that whether the method which was invented by the patentee was it a novel, was it non obvious? Now, with regard to this the supreme court of India also follows the same approach and I will read out the relevant operative part of the Supreme Court judgement.

It says that it is important to bear in mind that in order to be patentable an improvement on something known before or a combination of different matters already known, should be something than mere workshop improvement; and must independently satisfy the test of invention or inventive step.

US court uses this term skill of skill more than that of a mechanic the Indian Supreme Court uses this term that it should be more than a mere workshop improvement. And then the court says that to be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before. So, this better and cheaper article than before this is something which is the secondary market control consideration in USA like long field need it is addressing a long field market need something like that can also work in India.

But to be very precise when we looked into the definition we have seen that the operating section makes it very clear; that either economic consideration or sufficiently forward to the existing technology and it must appear non obvious to a person having ordinary skill in the art that is the understanding. Now, there therefore, there exist a doubt that where a particular invention is making only economic contribution addressing a long field need, will it clear the taste of non obviousness in India or not .

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Iron Grip Barbell Co., Inc. v. USA Sports, Inc., 392 F.3d 1317 (2004) [Secondary Consideration]

- **Iron Grip's** U.S. Patent No. 6,436,015, Claim 1

A weight plate for physical fitness including: a plate body formed with a central throughbore and ... further *formed with solely a triad of spaced apart elongated handle openings* disposed generally equiangularly ..., said openings having respective outboard edges cooperating with said plate to *define a triad of integral handle elements for grasping* by a single hand to effect transport of said weight plate.

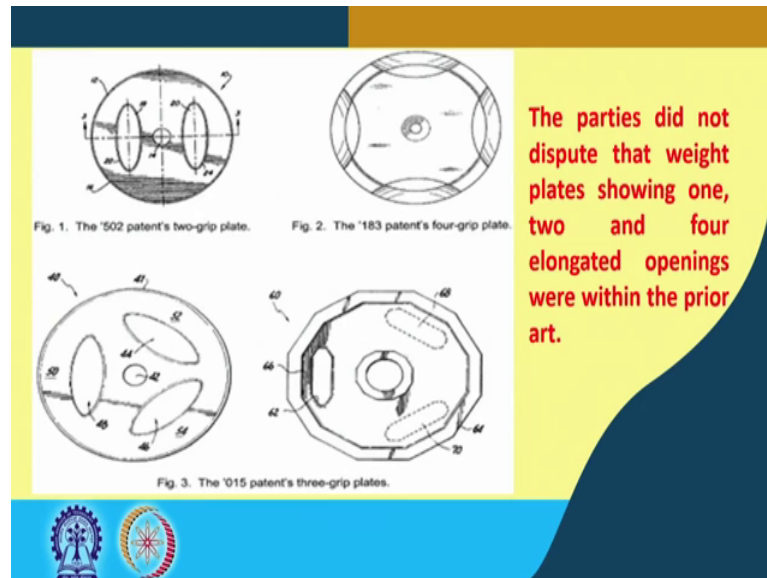
During the prosecution of the it patent, **Iron Grip** disclosed prior art showing, *inter alia*, weight plates with one elongated **grip**, U.S. Patent No. 4,199,140 and two elongated **grips**, U.S. Patent No. 5,137,502. The examiner further considered other prior art including barbell weight plates with four openings. U.S. Patent No. 4,618,142. After multiple rejections on grounds of obviousness, eventually the patent was granted on Aug. 20, 2002.

swayam

Now, we are talking about secondary consideration for a long time and I will conclude my lecture what is secondary consideration and in order to make you understand this I

will take a simple example. And as you can see here these are all what you call weights which are being used in barbell and barbell is used for weight lifting.

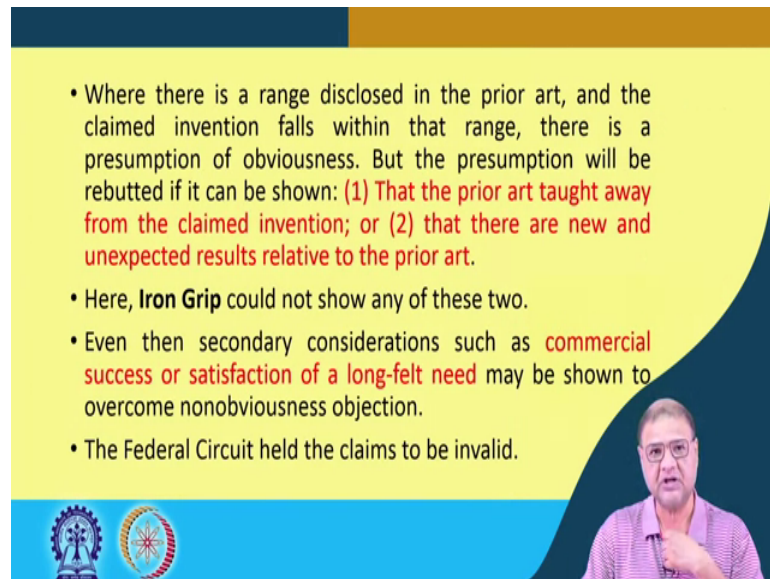
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Now, what you see at the top these are the prior arts which were existing. And you have seen that actually they are the these weight plates there are one what you call, there are weight plates which does have elongated opening; some weight plates have one opening, some has two opening, some have four opening. And then what you see at the bottom is the patented weight plate. In patented weight plate the there were three elongated opening and this would allow someone to grip the weight plate and put it in the barbell rod.

Now, after when the prosecution was going on this is the claim 1, I will not read it out, it is you can read it out from the screen. But when this prosecution for this patent was going on and the applicant himself has cited a what you call a patent which was having two grip and a patent having one elongated grip and these are the patent numbers. And even the examiner has cited a kind of patent US patent having four grip. So, this appeared to be obvious, but there the ultimately what has happened the patent was granted to the applicant on the basis of long field need.

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- Where there is a range disclosed in the prior art, and the claimed invention falls within that range, there is a presumption of obviousness. But the presumption will be rebutted if it can be shown: (1) That the prior art taught away from the claimed invention; or (2) that there are new and unexpected results relative to the prior art.
- Here, **Iron Grip** could not show any of these two.
- Even then secondary considerations such as **commercial success or satisfaction of a long-felt need** may be shown to overcome nonobviousness objection.
- The Federal Circuit held the claims to be invalid.

Now, the question comes up before the US court, again the matter goes before the Federal Circuit court of appeal in USA. The question is this actually; here there is a range of elongated opening and where there is a range of elongated opening is the disclosed in a prior art and the claimed invention falls within that range there is a presumption of obviousness.

However this presumption of obviousness can be rebutted as for the evidence law; if two things are proved that the prior art taught away from the claimed invention we have learned, and that there are new and unexpected result relative to the prior art.

Even what has happened the iron grip the court said; that iron grip could not show any of these two. Then there is the there is another way to get away with this enquiry to show a commercial success or satisfaction of a long felt need. Again iron grip fail to show this by adducing what if evidence before the court and as a result of that the Federal Circuit held that the claims are invalid.

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The slide is divided into two columns. The left column, titled 'Section 2(1)(ac) of the Patents Act, 1970', contains a bullet point: 'capable of industrial application', in relation to an invention, means that the invention is capable of being made or used in an industry. The right column, titled 'Article 57: Industrial application European Patent Convention', contains the text: 'An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry including agriculture.' At the bottom of the slide, there is a blue banner with logos for 'swayam' (Free Online Education) and 'INDIA VIKAS' (Digital India), and a small inset video of a man speaking.

And few words about Utility; now, section 2 1 ac and I this slide you can see I have compared and contrasted the European patent convention Article 57 with that of section 2 1 ac both of this section deal with Industrial Application. So, what is industrial application? So, to be very precise you see that it must be capable of being made or used in the industry.

Somehow I can may come out with an invention in my laboratory; however, when actually would I know fully well that when someone wants to make that invention or embody that invention in a product in large scale he would not be able to do it. There would be, this would defeat the utility requirement of patent; however, whenever an application is filed unless it is disproved there is a presumption of utility even in India.

Thank you very much.