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PATENTIBILITY

UNDER THE PATENT ACT, 1970

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Editorial Note

Patentability is the threshold inquiry of patent law. Before a claim is examined for its scope, before infringement is litigated and before licensing value is assessed, a single question must be answered: is the subject matter, as a matter of law, capable of being patented at all? This question is deceptively simple. In practice, it draws on statutory construction, scientific understanding, judicial precedent and an awareness of the policy compromises that shaped the Patents Act, 1970, in its present form.

This issue of PATENEVO IP Law Insights is devoted entirely to that question. The Indian patent statute is unusual among major patent jurisdictions in the specificity with which it excludes categories of subject matter from patent protection. Section 3 of the Act runs to fifteen clauses, each the product of distinct legislative concerns ranging from public morality to traditional knowledge to pharmaceutical Evergreening . A practitioner who does not understand the architecture of these exclusions and the reasoning of the courts that have interpreted them, cannot competently advise on patent strategy in India.

The analysis that follows proceeds from first principles. It begins with the constitutional and economic rationale for patent protection, moves through the statutory conditions of novelty, inventive step and industrial applicability and then undertakes a clause-by-clause examination of Section 3 in its entirety. Separate chapters are devoted to the three areas where patentability disputes have been most consequential in India: pharmaceutical substances under Section 3(d), computer-related inventions under Section 3(k) and biotechnological subject matter under Sections 3(c), 3(h), 3(i), 3(j) and 3(p). A dedicated chapter examines the leading decisions of the Supreme Court and the High Courts, with attention to the reasoning that produced their holdings and not merely the outcomes.

This publication does not advocate for any particular reform of patent law, nor does it take a position on the merits of pending policy debates. Where the legal position is settled, it is stated as settled. Where it remains contested or unresolved - as with several aspects of computer-related inventions and the treatment of incremental pharmaceutical innovation - that uncertainty is identified rather than resolved by assertion. Readers preparing for examinations, drafting patent specifications or advising clients should treat this issue as a structured reference, to be read alongside the primary sources it cites: the Patents Act, 1970, the Patent Rules, 2003, the Manual of Patent Office Practice and Procedure and the judgments of the Supreme Court and the High Courts.

PATENEVO remains an independent educational platform. It is not a law firm and does not provide patent filing services. Its purpose is confined to the accurate and rigorous exposition of Indian intellectual property law for the benefit of students, practitioners and researchers.

— Editorial Board, PATENEVO IP Law Insights

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Introduction

A patent is a statutory monopoly. It is granted by the State to an inventor in exchange for the public disclosure of an invention and it confers upon the patentee the exclusive right to prevent others from making, using, selling or importing the patented product or process for a limited term. The grant of this monopoly is not automatic. An applicant must satisfy a Controller of Patents, acting under the authority of the Controller General of Patents, Designs and Trade Marks, that the subject matter for which protection is sought meets the statutory threshold of patentability.

Patentability operates at two distinct levels under the Patents Act, 1970. The first is affirmative: **Section 2(1)(j),** read with **Section 2(1)(ja)** and **Section 2(1)(ac),** defines what an "invention" is and requires that it be new, involve an inventive step and be capable of industrial application. The second is exclusionary: **Section 3** of the Act enumerates fifteen categories of subject matter that are declared, by statute, not to be inventions for the purposes of the Act, irrespective of whether they might otherwise satisfy the conditions of novelty, inventive step and industrial applicability. **Section 4** adds a further exclusion for inventions relating to atomic energy. An application must clear both hurdles. A claim may define a new, non-obvious and industrially useful product or process and yet remain unpatentable because it falls within one of the categories excluded by **Section 3.**

This dual structure distinguishes Indian patent law from jurisdictions that rely primarily on judicially developed doctrines of patent-eligible subject matter, such as the United States under 35 U.S.C. § 101 as interpreted in **Alice Corp. v. CLS Bank International** and **Mayo Collaborative Services v. Prometheus Laboratories, Inc**. The Indian Parliament has instead chosen to codify the exclusions in considerable detail, leaving comparatively less room for courts to develop new categories of unpatentable subject matter through interpretation alone. This does not mean that judicial interpretation is unimportant. The text of Section 3 uses terms such **as "mere discovery," "per se," "technical effect," and "enhancement of known efficacy"** that require sustained judicial elaboration before they can be applied with consistency. The Supreme Court, the High Court's particularly the Delhi High Court, which hears the bulk of patent appeals following the dissolution of the Intellectual Property Appellate Board in 2021 and the Indian Patent Office have together built a substantial body of interpretive practice around these provisions.

This issue undertakes a comprehensive examination of patentability as it stands under Indian law. It is organised so that the statutory text is addressed first, followed by judicial interpretation, followed by the practical consequences for drafting and prosecution. Readers should treat the statute as the primary authority throughout; commentary and case law are aids to construction, not substitutes for the text of the Act.

Why Patentability Deserves Separate Treatment

Patentability is frequently treated, in introductory accounts, as a preliminary checklist to be satisfied before the "real" analysis of claim scope and infringement begins. This is a mistake of both practice and pedagogy. A significant proportion of patent oppositions, revocation petitions and invalidity defences in Indian litigation rest squarely on Section 3, particularly **Section 3(d)** in pharmaceutical disputes and **Section 3(k)** in software and computer-related inventions. The drafting choices made at the specification stage - how an invention is

characterised, what technical effect is claimed, how efficacy data is presented - determine whether a patent survives a Section 3 challenge years later. A patent agent who treats patentability as a formality rather than a substantive battleground does a disservice to the client.

Scope and Limits of This Issue

This publication addresses patentability under the Patents Act, 1970, as it applies to product and process inventions across all fields of technology, with particular depth in the areas that generate the greatest volume of patentability disputes in India: pharmaceuticals, biotechnology and computer-related inventions. It does not address designs, which are governed by the Designs Act, 2000 or plant varieties, which fall under the Protection of Plant Varieties and Farmers' Rights Act, 2001, except insofar as Section 3(j) of the Patents Act intersects with the latter regime. Procedural matters such as the mechanics of filing, examination timelines and opposition procedure are addressed only to the extent that they bear directly on patentability; readers seeking a comprehensive treatment of patent prosecution procedure should consult the Manual of Patent Office Practice and Procedure issued by the CGPDTM.

Meaning of Patentability

"Patentability" is not a term defined in the Patents Act, 1970. It is a term of art used by courts, the Patent Office and commentators to describe the composite legal status of an invention that satisfies every statutory condition necessary for the grant of a patent. An invention is patentable when it is, simultaneously: (a) an "invention" within the meaning of Section 2(1)(j); (b) not excluded by Section 3; (c) not excluded by Section 4; and (d) supported by a specification that meets the disclosure requirements of Sections 9 and 10. The first three conditions concern the subject matter itself. The fourth concerns the manner in which that subject matter is described and claimed. This issue is concerned primarily with the first three, though Chapter 17 addresses the relationship between patentability and specification drafting in detail.

Patentability Distinguished from Patent Validity

Patentability and validity are related but distinct concepts and the distinction matters in practice. Patentability is assessed prospectively, at the examination stage, against the application as filed. Validity is assessed retrospectively, often years after grant, in opposition, revocation or infringement proceedings, against the patent as granted and in light of evidence - including prior art, expert testimony and comparative data that may not have been before the Controller at the time of examination. A patent that was patentable on the record before the Controller may later be held invalid if a revocation petitioner under Section 64 produces prior art or evidence of inutility that was not considered during examination. The grounds for revocation under Section 64(1) substantially mirror the requirements of patentability, including novelty, inventive step and the Section 3 exclusions, which is why patentability analysis remains relevant throughout the life of a granted patent and not merely at the examination stage.

Patentability Distinguished from Patent Eligibility in Comparative Usage

Comparative readers, particularly those familiar with United States practice, sometimes use "patent eligibility" to refer to subject-matter exclusions and reserve "patentability" for the novelty and non-obviousness inquiry. Indian statutory drafting and judicial usage do not observe this distinction. In Indian practice, "patentability" is used as the comprehensive term covering both the subject-matter exclusions of Section 3 and the substantive conditions of Section 2(1)(j). This publication follows Indian usage throughout and uses "patent-eligible subject matter" only when drawing an explicit comparison to jurisdictions that maintain the narrower usage.

The Three-Stage Analytical Framework

Patent Office practice, as reflected in the Manual of Patent Office Practice and Procedure and the structure of Section 2(1)(j) itself, support a three-stage analytical sequence that this issue follows throughout:

1. Is the claimed subject matter capable of being an "invention" at all - that is, does it fall within one of the categories excluded by Section 3 or Section 4? This is a threshold, categorical inquiry independent of novelty or inventive merit.

2. If the subject matter clears the Section 3 and Section 4 exclusions, does it satisfy the substantive conditions of Section 2(1)(j): novelty under Section 2(1)(l), inventive step under Section 2(1)(ja) and industrial applicability under Section 2(1)(ac)?
3. Does the complete specification disclose the invention sufficiently to satisfy Section 10, including a fair basis for the claims under Section 10(4) and (5)?

Examiners in practice frequently raise Section 3 objections and novelty or inventive step objections in the same First Examination Report and an applicant should not assume that overcoming one type of objection disposes of the other. The two inquiries are conceptually independent: an invention may be entirely novel and yet remain excluded under Section 3(d) as a new form of a known substance without enhanced efficacy, just as an invention may fall outside every Section 3 exclusion and yet be refused for want of inventive step under Section 2(1)(ja).

Constitutional and Economic Basis of Patent Protection

The Constitution of India does not contain a provision expressly analogous to Article I, Section 8, Clause 8 of the United States Constitution, which empowers Congress to grant exclusive rights to authors and inventors "to promote the Progress of Science and useful Arts." Patent law in India instead derives its constitutional legitimacy from Entry 49 of the Union List in the Seventh Schedule, which assigns "**patents, inventions and designs**" to the exclusive legislative competence of Parliament and more substantively from the directive principles in Part IV of the Constitution, particularly **Articles 39(b) and 39(c),** which direct the State to ensure that the ownership and control of material resources are distributed to subserve the common good and that the operation of the economic system does not result in the concentration of wealth to the common detriment.

The Supreme Court drew directly on this constitutional framework in **Novartis AG v. Union of India,** where it described the grant of product patents for pharmaceutical substances introduced into Indian law only in 2005 to comply with the TRIPS Agreement as an exception carved out of the general scheme of the Constitution favouring widespread access to essential goods, an exception to be construed narrowly rather than expansively. The Court did not hold that patent protection is constitutionally suspect; it held that **Section 3(d),** as a textual limitation on an otherwise broad grant of patent rights, should be read in a manner consistent with the directive principles favouring public health and affordable access to medicine.

The Economic Rationale: Disclosure in Exchange for Exclusivity

The conventional economic justification for patent protection rests on the problem of public goods. Information, once disclosed, is non-rivalrous and largely non-excludable: a competitor can copy a published invention at a fraction of the cost the original inventor incurred in research and development, free-riding on an investment it did not bear. Absent legal protection, this dynamic threatens to suppress investment in innovation, since rational actors will under-invest in research whose fruits cannot be appropriated. The patent system addresses this through a bargain: the State grants the inventor a time-limited exclusive right in exchange for complete and enabling disclosure of the invention through the patent specification, which becomes part of the public record under Section 10 and is published under Section 11A.

This bargain has two halves and Indian patent law is attentive to both. The exclusivity half is reflected in the term of patent protection twenty years from the date of filing under **Section 53** and in the remedies available for infringement under Sections 108 to 110. The disclosure half is reflected in the strict requirements of Section 10, which mandate that the specification describe the invention, its operation and the best method of performing it known to the applicant, fully and particularly, sufficient to enable a person skilled in the art to perform the invention without further invention. An applicant who obtains a patent through an inadequate or misleading specification has not honoured the disclosure bargain and the patent becomes vulnerable to revocation under **Section 64(1)(h) and (1)(l).**

The Indian Policy Compromise: Innovation Incentive and Access to Medicine

India's patent statute has, since its enactment, reflected a distinctive policy compromise between encouraging domestic and foreign investment in research and ensuring that patent monopolies do not impede access to essential goods, particularly medicines and agricultural inputs, in a developing economy. The original 1970 Act permitted only process patents for pharmaceutical and agrochemical substances, not product patents, precisely to allow Indian manufacturers to develop alternative processes for producing the same substance without infringing a foreign patentee's process claim. This compromise was central to the growth of the Indian generic pharmaceutical industry between 1970 and 2005.

India's accession to the World Trade Organization and its obligations under the TRIPS Agreement required the reintroduction of product patents for pharmaceutical and agrochemical substances, implemented through the **Patents (Amendment) Act, 2005**, with effect from **1 January 2005**. Parliament did not implement this change without qualification. **Section 3(d),** introduced in its present form by the 2005 amendment, was designed to ensure that the new product-patent regime would not be used to extend pharmaceutical monopolies through trivial reformulations of known substances a practice commonly described as "**Evergreening." Sections 84 to 92** of the Act, governing **compulsory licensing** and Section 107A, providing a **Bolar-type exemption** for regulatory testing and certain parallel-import safeguards, serve a similar balancing function. The interpretation of **Section 3(d)** by the Supreme Court in Novartis is best understood as a judicial endorsement of this legislative compromise, not as an independent policy intervention by the Court.

Key Constitutional and Policy Touchpoints

Entry 49, Union List, Seventh Schedule - legislative competence over patents

Articles 39(b) and 39(c), Directive Principles - equitable distribution of resources, prevention of concentration of wealth

TRIPS Agreement, Articles 27 and 65 - obligation to extend product patents to pharmaceuticals from 1 January 2005

Patents (Amendment) Act, 2005 - reintroduction of product patents; introduction of Section 3(d) in its current form

Patentability under the Patents Act, 1970

The statutory architecture governing patentability is concentrated in a small number of provisions, but their interaction requires careful attention. This chapter sets out that architecture as a coherent whole before the subsequent chapters examine each component in detail.

Section 2(1)(j): The Definition of Invention

Section 2(1)(j) defines **"invention"** to mean a new product or process involving an inventive step and capable of industrial application. Every word in this definition carries independent legal weight. "New" incorporates the novelty requirement, elaborated through the definition of "new invention" in Section 2(1)(l) and the anticipation provisions of Section 13 read with Sections 29 to 34. "Inventive step" is separately defined in Section 2(1)(ja). "Capable of industrial application" is separately defined in Section 2(1)(ac). A product or process that fails any one of these three elements is not an "invention" under the Act and cannot be patented, regardless of whether it falls within any Section 3 exclusion.

Section 2(1)(l): New Invention

Section 2(1)(l) defines **"new invention**" to mean any invention or technology that has not been anticipated by publication, in any document or used in the country or elsewhere in the world before the date of filing of the patent application, with complete specification, that is, the subject matter has not fallen in the public domain or does not form part of the state of the art. This definition establishes an absolute novelty standard: prior disclosure anywhere in the world, in any document, defeats novelty, in contrast to jurisdictions that historically applied a local novelty standard limited to disclosure within the jurisdiction.

Section 3: Inventions Not Patentable

Section 3 is captioned **"What are not inventions"** and provides that the following are not inventions within the meaning of the Act, listing **fifteen categories** from clause (a) to clause (p), with clauses (e) onward inserted or amended at various points, principally through the Patents (Amendment) Act, 2002 and the Patents (Amendment) Act, 2005. The function of Section 3 is exclusionary and categorical: it removes specified subject matter from the scope of patent protection irrespective of novelty or inventive merit. A perfectly novel and technically sophisticated mathematical algorithm remains unpatentable under Section 3(k) for the simple reason that it is a mathematical method, full stop.

Section 4: Inventions Relating to Atomic Energy

Section 4 provides that no patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of Section 20 of the Atomic Energy Act, 1962. This is a narrow, specialised exclusion connected to India's atomic energy regulatory framework and is rarely litigated, but it forms part of the complete statutory scheme governing patentable subject matter and should not be overlooked in a systematic treatment of patentability.

Sections 9 and 10: The Specification Requirement

Patentability, in the comprehensive sense used in this issue, also depends on the adequacy of the patent specification. Section 9 governs the filing of provisional and complete specifications and the timeline for converting a provisional application into a complete one. Section 10 prescribes the contents of the complete specification, requiring a full and particular description of the invention, its operation or use and the best method of performing it, disclosure that must be sufficient to enable a person skilled in the art to perform the invention and claims that are clear, succinct and fairly based on the matter disclosed. An invention that is, in substance, novel, inventive and outside every Section 3 exclusion will nonetheless fail to mature into a valid patent if the complete specification does not satisfy Section 10.

How the Provisions Interact: A Worked Sequence

In Patent Office practice, an examiner reviewing a complete specification typically proceeds through the following sequence and an applicant or its agent should anticipate the same sequence when assessing patentability before filing:

1. Identify the subject matter actually claimed, construing the claims purposively and not merely by their form or label.
2. Determine whether that subject matter, as claimed, falls within any clause of Section 3 or within Section 4. This determination does not depend on novelty; even an admittedly novel discovery is excluded if it is, for instance, “merely a discovery of a scientific principle” under Section 3(a) or “a mere discovery of a new form of a known substance” without enhanced efficacy under Section 3(d).
3. If no Section 3 or Section 4 exclusion applies, assess novelty under Section 2(1)(l) against the prior art, including any anticipation by prior publication or prior use, public knowledge or use in India under Sections 29 to 34.
4. Assess inventive step under Section 2(1)(ja), asking whether the claimed advance, viewed against the prior art as a whole, would have been obvious to a person skilled in the art at the priority date.
5. Assess industrial applicability under Section 2(1)(ac).
6. Assess whether the complete specification satisfies Section 10, including sufficiency of disclosure and fair basis for the claims.

Objections raised at any stage of this sequence are independent grounds for refusal and an applicant must address each ground raised in a First Examination Report; resolving an inventive step objection, for example, does nothing to cure an outstanding Section 3(k) objection on the same claim.

Essential Conditions for Patentability

Section 2(1)(j) reduces the substantive conditions for patentability to three: novelty, inventive step and industrial applicability. This chapter examines each in turn, with attention to statutory text, judicial interpretation, practical illustration and the misconceptions that recur most often in practice and in examination.

Novelty

Statutory Basis

Novelty is not separately defined as a freestanding term in Section 2(1). It is captured through the word "new" in **Section 2(1)(j)** and elaborated through the definition of "new invention" in **Section 2(1)(l),** which requires that the invention or technology not have been anticipated by publication in any document or used in India or elsewhere in the world, before the date of filing the complete specification - that is, the subject matter must not have fallen into the public domain or formed part of the state of the art. The statutory anticipation provisions in Sections 29 to 34 supply a series of exceptions and clarifications: for instance, **Section 29** excludes anticipation by prior publication without the consent of the true and first inventor and **Section 31** protects disclosure at certain recognised exhibitions and before learned societies, subject to conditions including the filing of the application within twelve months of the disclosure.

The Standard: Absolute and Universal Novelty

India applies an absolute, worldwide novelty standard. Prior disclosure anywhere in the world - in a granted patent, a published patent application, a scientific paper, a doctoral thesis, a product brochure or a public lecture - defeats novelty if it occurred before the priority date and if the disclosure enables the claimed subject matter to be practised by a person skilled in the art. There is no exception in Indian law analogous to the twelve-month grace period that some jurisdictions extend to disclosures made by the inventor; the limited Indian exceptions in **Sections 29 to 34** are narrower and more specific and an applicant should not assume that a prior disclosure by the inventor is automatically excused.

Anticipation by a Single Prior Document

The test for anticipation is whether a single prior art document, read as a whole by a person skilled in the art, discloses every essential feature of the claimed invention, either expressly or by clear and unmistakable direction. Anticipation cannot be established by combining the disclosures of two or more separate prior art documents or by supplementing an incomplete disclosure with common general knowledge to fill an essential gap; such combination exercises belong to the inventive step inquiry, not to novelty. This distinction is frequently blurred in practice, including in examination reports that cite multiple documents under a single novelty objection without identifying which single document anticipates which specific claim feature.

Practical Example

Suppose a prior published patent application discloses a chemical compound by its general Markush structure, encompassing millions of theoretical variants, without specifically naming or exemplifying the particular compound later claimed in a subsequent application. Whether

the later claim is anticipated depends on whether the earlier disclosure points unerringly to the specific compound, a question that has generated substantial litigation in pharmaceutical patent disputes, including in the genus-species anticipation arguments raised in several proceedings before the Delhi High Court involving selection patents. A broad generic disclosure does not automatically anticipate every species falling within it; the analysis turns on whether the earlier document provides sufficiently specific and enabling guidance toward the particular compound later claimed.

Common Misconceptions Concerning Novelty

- That an invention is novel merely because it has not been patented before in India. Novelty is assessed against worldwide disclosure, not merely against the Indian patent register.
- That minor differences in wording or presentation from a prior disclosure are sufficient to establish novelty. Novelty is assessed against the substance of what is disclosed, not the language used to describe it.
- That an inventor's own prior publication can never defeat novelty of a later application by the same inventor. Indian law affords only narrow and conditional protection against self-anticipation under Sections 29 to 31 and these provisions must be affirmatively invoked and satisfied; they are not a general grace period.
- That confidential disclosure, such as disclosure under a non-disclosure agreement, never affects novelty. Disclosure that remains genuinely confidential does not anticipate, but a breach of confidence resulting in public disclosure or disclosure to a person not bound by an obligation of confidence, can defeat novelty even if unintended.

Inventive Step

Statutory Basis

Section 2(1)(ja) defines “inventive step” as 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. This definition, introduced in its present form by the Patents (Amendment) Act, 2005, replaced an earlier and narrower formulation introduced by the 2002 amendment that referred only to a feature that makes the invention not obvious to a person skilled in the art. The addition of “technical advance” and “economic significance” as alternative or cumulative bases broadened the textual scope of the inquiry, though courts have continued to treat technical advance and non-obviousness as the operative core of the analysis, with economic significance functioning as a supplementary consideration rather than an independent gateway to patentability for an otherwise obvious advance.

The Leading Authority: Bishwanath Prasad Radhey Shyam

The foundational Indian authority on inventive step remains Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979) 2 SCC 511, decided by the Supreme Court on 13 December 1978. The dispute concerned a patent for a process of manufacturing brass and German silver utensils by a particular combination of rolling and drawing operations on a headstock-and-tailstock lathe arrangement. The Court, speaking through Sarkaria, J., held that the patented process was neither a manner of new manufacture nor a distinctive

improvement involving novelty or inventive step, since the constituent elements of the claimed combination - the headstock, the tailstock and the general technique of turning - were all previously known and in use in the trade and their combination represented no more than an ordinary workshop improvement that any skilled worker in the trade would have arrived at without the exercise of inventive ingenuity.

The judgment articulated principles that continue to govern inventive step analysis in India. It held that a mere combination of known integers does not, by itself, negate patentability; a new combination may be patentable if the working interrelation of the combined elements produces a new or improved result, a new article or an article that is substantially cheaper or more efficient than what existed before. The decisive inquiry, the Court explained, is whether the alleged invention lies outside the probable expectation of a skilled worker in the relevant trade, judged without the benefit of hindsight knowledge of the invention itself. The Court also cautioned against assessing inventive step by working backward from the patented solution, since virtually any solution can be made to appear obvious once it is known, a caution that has been repeatedly invoked by subsequent courts as a guard against impermissible hindsight reasoning.

The Person Skilled in the Art

Inventive step is assessed from the vantage point of a notional "person skilled in the art" - a hypothetical worker possessing ordinary skill and common general knowledge in the relevant technical field as of the priority date, but lacking inventive imagination. This person is presumed to be aware of all prior art that would have been reasonably accessible through diligent search and is capable of routine experimentation and the application of ordinary engineering or scientific judgment, but is not credited with the creative insight that distinguishes a genuine inventive contribution. The construct serves the same analytical function as comparable standards in other jurisdictions, such as the person having ordinary skill in the art under United States law or the skilled addressee in the United Kingdom and European framework, though the case-specific content given to the standard by Indian courts has developed independently through decisions such as Bishwanath Prasad and the substantial body of Section 3(d) and Section 3(k) jurisprudence discussed in later chapters.

Structured Approaches to the Obviousness Inquiry

Indian courts, particularly the Delhi High Court in patent infringement and revocation proceedings, have increasingly applied structured, multi-step frameworks for assessing obviousness, drawing on approaches developed in comparable common law jurisdictions, including the Windsurfing/Pozzoli framework used in the United Kingdom. Such frameworks typically require a court to: identify the inventive concept of the claim in question; identify the notional person skilled in the art and the relevant common general knowledge that person is presumed to possess at the priority date; identify the differences, if any, between the cited prior art and the claimed invention; and determine, without the benefit of hindsight, whether those differences would have been obvious to the skilled person. While Indian courts have not adopted any single framework as exclusively binding, the underlying analytical discipline - isolating the inventive concept, fixing the prior art baseline, identifying the precise difference and assessing obviousness of that difference without hindsight - is now a settled feature of Indian inventive step analysis.

Practical Example

Consider a claimed pharmaceutical composition combining two active ingredients, each independently known and each independently disclosed for treating a related condition, where no prior document suggests combining them and the combination produces a synergistic therapeutic effect greater than the additive effect of the two components administered separately. Such a combination is likely to satisfy the inventive step requirement, since the synergy is not predictable from the separate disclosures and would not have been obvious to a skilled formulator applying routine combination techniques. By contrast, a claimed composition that simply combines two known active ingredients in their established dosage ranges, with no evidence of synergy beyond the additive effect either ingredient would be expected to produce alone, is vulnerable to an inventive step objection as an obvious combination of known elements for their known purposes.

Common Misconceptions Concerning Inventive Step

- That commercial success of a product is itself proof of inventive step. Commercial success may be evidentially relevant as a secondary indicator in a close case, but it cannot substitute for a demonstration of technical non-obviousness and a product can succeed commercially for reasons unconnected to any inventive technical contribution, such as marketing, pricing or distribution advantages.
- That an invention is non-obvious merely because no single prior document discloses it in identical form. Inventive step assesses obviousness in light of the prior art as a whole, including the combination of multiple documents or sources of common general knowledge, not merely identity with any single document, which is properly the test for novelty rather than inventive step.
- That a long-felt but previously unmet need automatically establishes inventive step. Such evidence may support a finding of non-obviousness but does not by itself satisfy the requirement; the claimed solution must still be shown to involve a technical advance that would not have been obvious to a skilled person applying ordinary skill to the known problem.

Industrial Applicability

Statutory Basis

Section 2(1)(ac) defines “capable of industrial application,” in relation to an invention, to mean that the invention is capable of being made or used in an industry. The term “industry” is understood broadly in Indian practice and is not confined to manufacturing in the traditional sense; it extends to agriculture, fisheries and other productive economic sectors, consistent with the broad understanding of “industry” under Article 1(3) of the Paris Convention for the Protection of Industrial Property, to which India is a party.

Function of the Requirement

Industrial applicability serves a comparatively narrow gatekeeping function relative to novelty and inventive step. It excludes purely theoretical or speculative subject matter that cannot, even in principle, be made or used to produce a practical result and it overlaps significantly with several Section 3 exclusions, particularly Section 3(a), which excludes the mere discovery of a scientific principle or the formulation of an abstract theory and Section 3(c), which excludes the mere discovery of a scientific principle or the formulation of an abstract theory as it pertains to discovery of any living thing or non-living substance occurring in nature. In practice, industrial applicability objections are raised far less frequently in isolation than

novelty or inventive step objections, since an invention specific enough to be claimed with the particularity required by Section 10 will usually, by that same specificity, satisfy the threshold of practical applicability.

Practical Example

A claimed method for treating a disease that depends on a postulated biological mechanism not yet demonstrated to occur or whose practical implementation cannot be achieved with the techniques disclosed in the specification, may fail the industrial applicability requirement even if the underlying scientific hypothesis is intellectually significant, because the claimed subject matter cannot presently be made or used in industry on the basis of the disclosure provided. By contrast, a claimed manufacturing process that has been reduced to practice and produces a defined, reproducible product satisfies industrial applicability without difficulty, even if questions of novelty or inventive step remain to be separately resolved.

Common Misconceptions Concerning Industrial Applicability

- That industrial applicability requires commercial viability or profitability. The requirement is satisfied by capability of being made or used in an industry; an invention need not be commercially successful or even commercially attractive, to satisfy this condition.
- That industrial applicability is synonymous with utility as understood in some other jurisdictions. While related, the Indian formulation is framed in terms of capability of industrial manufacture or use rather than a freestanding utility doctrine and the two should not be treated as interchangeable when comparing Indian law with foreign authority.