



Disability?
The Only Disability Is..
Low Self Esteem
 People Who Cannot Walk...
Can Fly with their attitude
 People who cannot Stand?
Might Get Standing Ovation
 People Who cannot See?
Might Give Vision to All
Fly Without Wings?

From U. Hridayeshwar Singh Bhati
 (Wheelchair Patent Holder of India)

Youngest Patent-holder on wheelchair



♦ JAIPUR: Drawing inspiration from scientist **Srinivasan**, a wheelchair-bound nine-year-old boy here has invented a game of six-player circular chess. The boy, **Hridayeshwar Singh Bhati** has got the game's design patented in his name.



- **Hridayeshwar Singh Bhati (3 Sept 2002 – 15 June 2021) –**

- An Indian student who invented a 6-player variant of chess at the age of 9 with assistance from his father.
- He earned a patent for his invention in 2012, making him the **youngest patent-holder in India** at that time.
- **Awards** - The CavinKare Ability Special Recognition Award & the Sri Balaji Society's Child Innovator Award.
- He since designed & received patents for 12 & 60 player versions of his game, with his boards capable of 100 distinct variations altogether.

- **Important** –
- **First patent in the World (1421)** –
- Florence – Architect & Engineer Filippo Brunelleschi
– Manufacturing of a barge with hoisting gear used to transport marble.
- **Highest Patent Holder** –
- Shunpei Yamazaki – Japan - 6041 patents
- **Highest patent holder country** –
- China

- **India –**

- **First Indian Patent Holder –**

- George Alfred Depenning from Calcutta – An efficient punkah pulling Machine - 1856

- **Most patents by an Indian –**

- Gurtej Singh Sandhu – over 1340 utility patents – works at Micron Technology – Electrical Engineer

- **Youngest Patent Holder –**

- Hridayeshwar Bhati (13 Years)

PATENTS

- Meaning of Discovery –

- 1) Detecting something that is already in existence or it is finding out.
- 2) These are natural creations.
- 3) Intentional or unintentional.
- 4) Observation of new phenomenon.

Meaning of Invention –

- 1) To create new ideas, objects or theories that are not in existence yet.
- 2) It is creation of mind.
- 3) Always intentional.
- 4) It is created with knowledge, imagination & applying experience with ideas.
- 5) It may be improvement of existing knowledge.
Eg. Light Bulb- Edison, T.V. – John Beyard etc.
- 6) Invention may lead to discovery eg. Microscope- bacteria, atoms.
- 7) Discovery may lead to invention. Eg. Discovery of radio waves.

- **History of Patent –**

- **First Patent Statute** in the world – **The Venetian Patent Statute of March 19, 1474** established in the Republic of Venice

- In India, Legislations in British Period – **1856, 1859, 1872, 1888** - to maximise the profit & only product patent- charged higher prices

- **1970 - Indian Patent Act** was passed, Patent Rules - both process patent and product patents are given

- Process patent mainly given in **food & pharmaceutical industry.**

- **1995** – India joined WTO, TRIPS – under TRIPS every member country has to shift from process patent to product patent
- Amendments in Patents Act, 1970 – **1999, 2002 & 2005**
- **2005 – The Patent Amendment Act –**
- eg . Drug price control order – prices of essential drugs will not come under any contract or law.

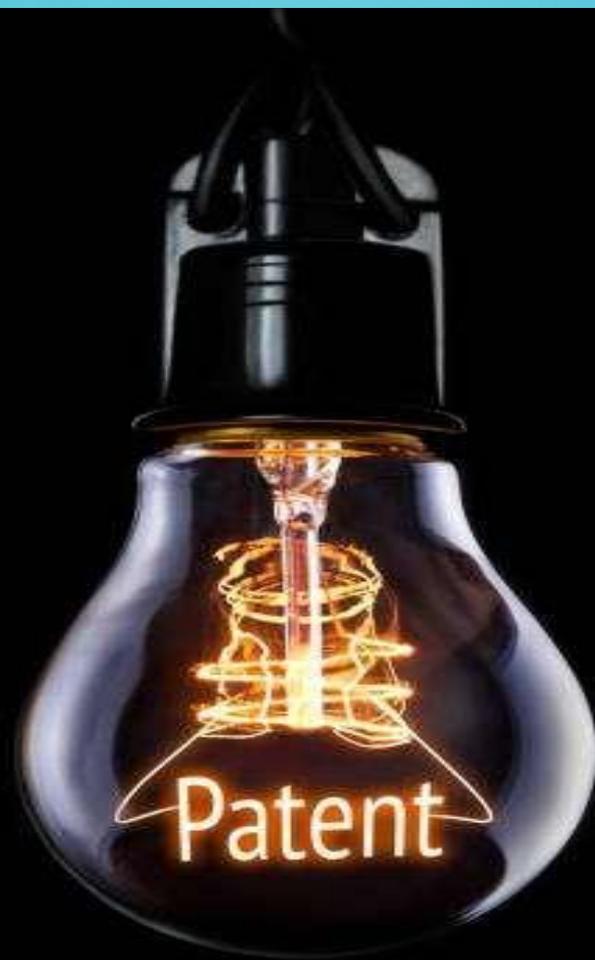
• **What is Patent –**

- Protection granted to inventions.
- The word “**patent**” is derived from the Latin word “**patene**” which means “to open”.
- Simply, it is legal grant of monopoly right for some fixed term to inventor of new & useful inventions as consideration for disclosure of such invention.
- **It** is a grant of protection to inventor conferring on him exclusive right to use his invention.
- He can use his invention for **making, manufacturing, selling different goods & services with his invention for economic gain.**
- It also gives right to inventor **to assign or grant licence of patent.**



• **Examples of Patent –**

- Light bulb
 - Telephone
 - Computer
 - Bluetooth
 - Gravity powered shoe air conditioner
 - Pen with scanner
 - Internal combustion machine
 - FireEye Malware System
- 
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Patent

- **Definition of Patent**

(S. 2(m) Patent Act, 1970) –

- Patent means **“Patent granted under this Act”**.
- Patent grants exclusive rights to the inventor (patentee) **to make, use, licence or sell the invention for a limited period of time.**
- In other words, a patent is **an official document** given to an inventor by the Government allowing him to exclude anyone else from commercially exploiting his invention for a limited period which is **20 years** at present.

• **3. Essentials of Patent –**

- Patent is **a licence of protection.**

- It is granted **by the State** to the inventor.

- It is granted to invention which is **new, useful & having industrial application.**

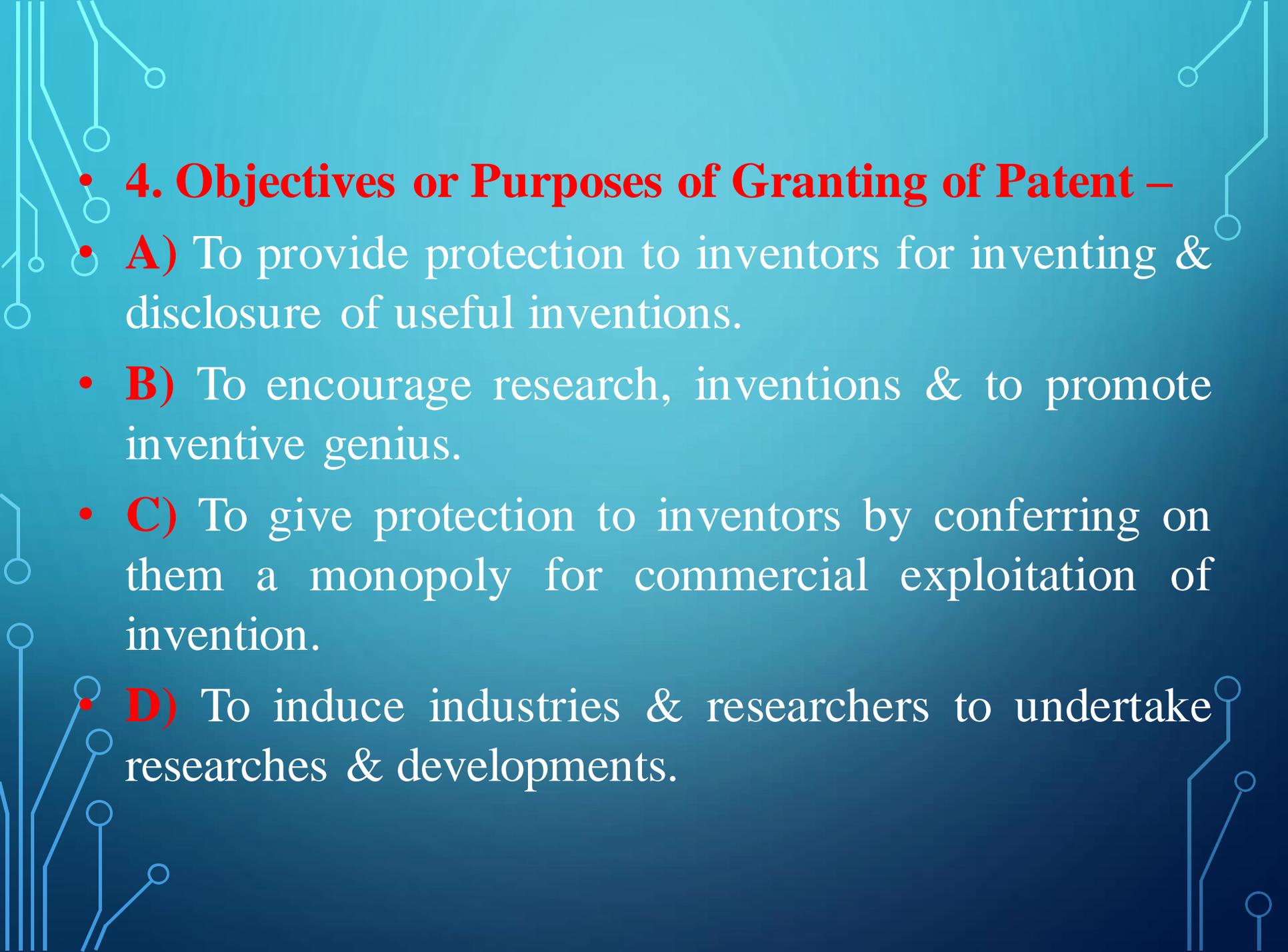
- It may include any **new process or new product.**

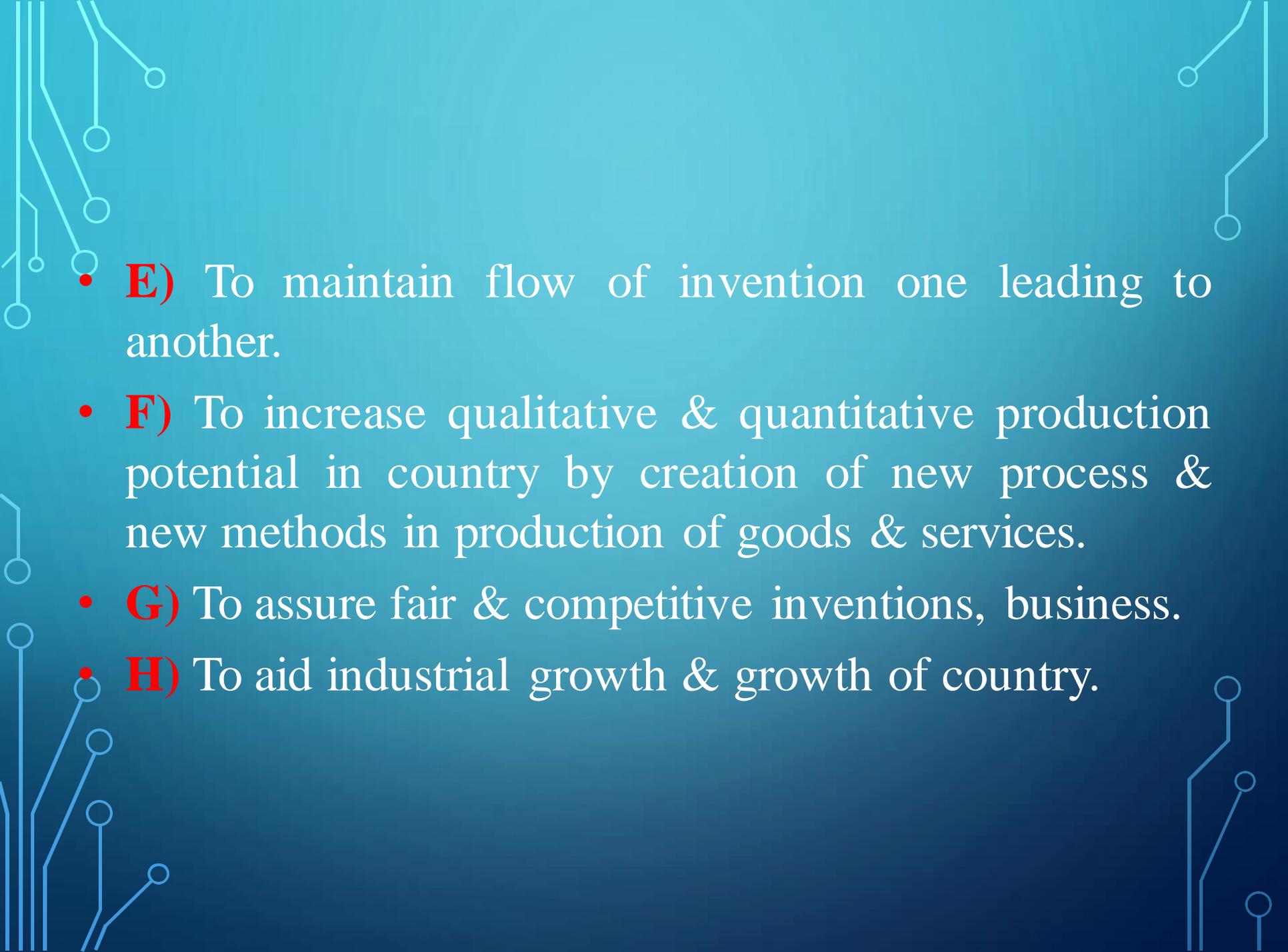
- Patent confer exclusive rights to inventor for **disclosure of his invention public.**

- It is granted for **a limited period i.e. 20 years.**

- It assures **monopoly** for inventor & protection from state against unauthorized user.

- It is available to **movable property.**

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- **4. Objectives or Purposes of Granting of Patent –**
 - **A)** To provide protection to inventors for inventing & disclosure of useful inventions.
 - **B)** To encourage research, inventions & to promote inventive genius.
 - **C)** To give protection to inventors by conferring on them a monopoly for commercial exploitation of invention.
 - **D)** To induce industries & researchers to undertake researches & developments.

- 
- **E)** To maintain flow of invention one leading to another.
 - **F)** To increase qualitative & quantitative production potential in country by creation of new process & new methods in production of goods & services.
 - **G)** To assure fair & competitive inventions, business.
 - **H)** To aid industrial growth & growth of country.

- **D)** To ensure improvement of life of public at large.
- **J)** To generate & promote scientific temper.
- **K)** The object of patent law is to encourage scientific research, new technology & industrial progress.
- The price of the grant of the monopoly is the disclosure of the invention at the patent office, which, after the expiry of the fixed period of the monopoly, passes into the public domain.

• **5. Reason for Limited Period of Protection –**

- The principle for granting patent protection is that – **private & public interest** must be protected in **balanced** manner.
- It **firstly** protect the **interest of inventor** for limited period with exclusive monopoly & **secondly**, with expiration of such period it can be used by any person. In such way **public interest** is also protected.

- It improves & increases **production at mass scale**.
- It is necessary to improve **life of human** kinds.
- It is useful for **national economy**.
- The basic principle is that it is granted to inventions which is **novel, useful & capable of industrial applications**.

• **Salient Features of the Patent Act, 1970 –**

- A more & elaborate definition of invention.
- Declaration of certain inventions as non- patentable.
- Abolition of product patents for drugs & medicines.
- Stringent requirements regarding description of the invention.
- Extension of grounds for opposing the grant of patent. Etc.

• **Object of Patent Law –**

- **A)** To encourage scientific research, new technology & industrial progress.
- **B)** Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period.
- **C)** Stimulates new inventions of commercial utility.
- **D)** The price of the grant of the monopoly is the disclosure of the invention at the patent office.
- **E)** After the expiry of the fixed period of the monopoly, passes into the public domain.
- **F)** To ensure dissemination of the knowledge.

• **Patentable & Non- Patentable Inventions –**

• **1) Introduction –**

- Subject matter of patent is invention. It means every invention is not entitled to be patented.
- Hence, the invention must satisfy conditions for patentability.

• **2) What is Invention (S. 2(1)(j) of the Act) –**

- An invention means **a new, product or process involving an inventive step & capable of industrial application.**

- **3. What is Inventive Step (S. 2 (1)(ja) of the Act) –**

- Inventive step is a feature of an invention that involves **technical advance** as compared to existing knowledge or having **economic significance** or **both**, making the invention **non-obvious** to a person skilled in art.
- The definition includes economic significance of the invention apart from already existing criteria for determining inventive step.

- **4. What is New Invention (S.2(l) of the Act) –**

- **Definition-** Any invention or technology which 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 patent application with complete specification i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art.

- **5. What is Capable of Industrial Application (S.2(1)(ac) of the Act) –**

- It means that the invention is capable of being made or used in an industry.



- **6. Essentials of Patentable Inventions**

A) Novelty

B) Non-Obviousness (Inventive step) &

C) Utility (Industrial Applicability)



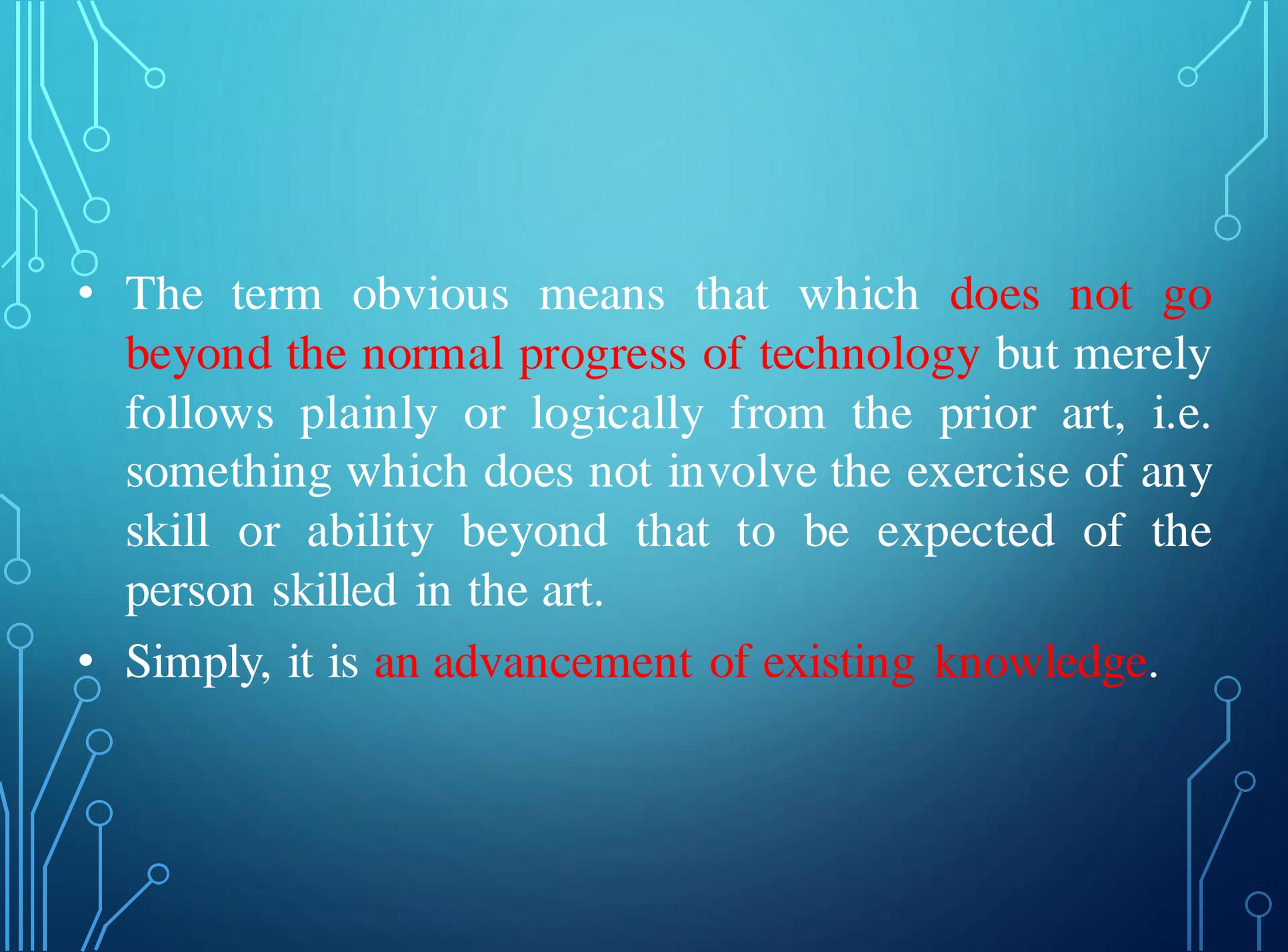
• **A) Novelty –**

- It is the core value of invention to become patentable patent.
- It is defined as – “New invention which is **not anticipated by publication in country or elsewhere** at the time of filling of application of patent”.
- **Eg.** The Patent granted to US for turmeric products, was challenged by Indian Council for Scientific & Industrial Research (CSIR) on this ground.
- The Patent granted to US was revoked & granted to India.



- **B) Inventive Step (Non-Obviousness) –**

- Inventive step is a feature of an invention that involves **technical advancement as compared to existing knowledge** or **having economic significance** or **both**, making the invention non-obvious to a person skilled in art.
 - An invention shall not be considered as involving an inventive step if having regard to the state of the art, it is obvious to a person skilled in the art.
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- The term obvious means that which **does not go beyond the normal progress of technology** but merely follows plainly or logically from the prior art, i.e. something which does not involve the exercise of any skill or ability beyond that to be expected of the person skilled in the art.
 - Simply, it is **an advancement of existing knowledge.**

- **Case – Bishwanath Prasad V. Hindustan Metal Industries (1978)**

- Plaintiff – HMI & Defendant – Bishwanath
- HMI – Manufacturer of brass & German silver utensils at Mirzapur – Invented a device & method of manufacturing utensils – Improvement, convenience, safety, speed, better finish.
- Patent obtained in 1951 under the old Act of 1911.
- Bishwanath – Manufacturer of dishes & utensils at Mirzapur started using the same method

- Objected by the plaintiff – Claimed damages for infringement of their patented invention
- **Held,** method of manufacture did not involve any inventive step or novelty/ workshop improvement

- **Case – Narayan Chandra Das V. Jolly (2011)**

- Respondent obtained a patent for an invention involving merely stitching of a head scarf & muffler together called ‘**Head scarf cum neck covering apparel for women**’.

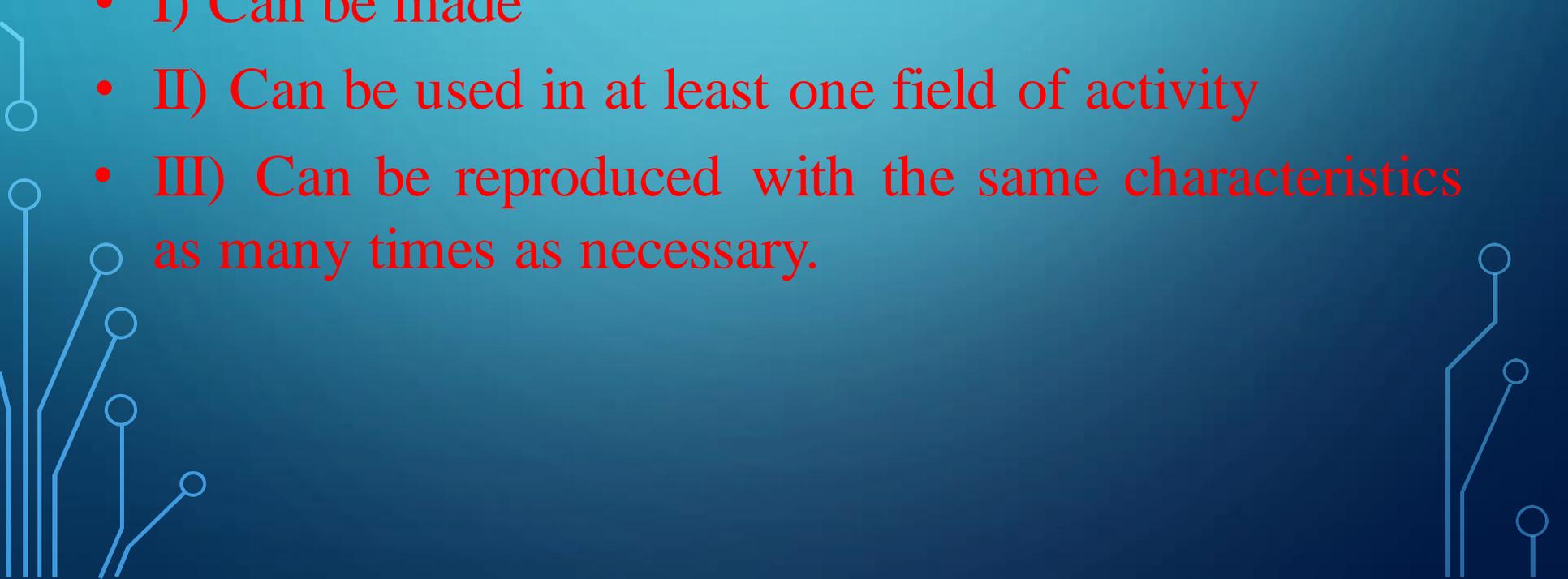
- Application for revocation of patent u/s 64 of PA, 1970 was filed.

- I.P.A.B. revoked the grant of patent on the ground that it was only a mere juxtaposition of known components therefore there was no novelty in it.

- **Held,** I.P.A.B. decision was confirmed / the patent was revoked.



- **C) Utility (Capable of Industrial Application) –**

- An invention is capable of industrial application if it satisfies three conditions, cumulatively :
 - **I) Can be made**
 - **II) Can be used in at least one field of activity**
 - **III) Can be reproduced with the same characteristics as many times as necessary.**
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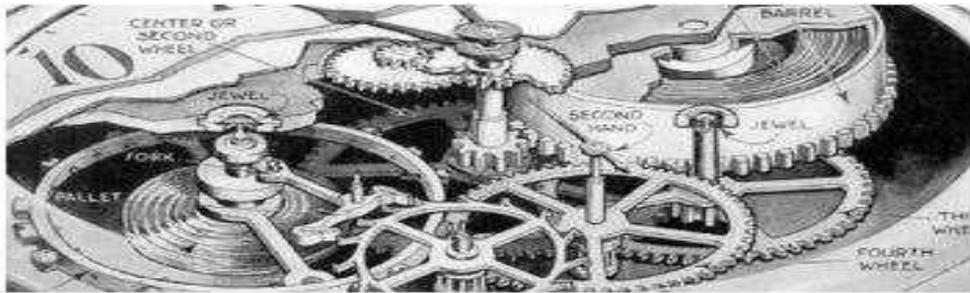
- **Case – Cipla Ltd. V. F. Hoffman-La Roche Ltd & Another (2015)**
- Roche applied for the patent on a drug called ‘Erlotinib Hydrochloride’ useful in lung cancer.
- Roche was granted the patents in USA & India.
- The Court made in detailed discussion on the concept of utility i.e. industrial application.
- Held, it is not the product that is the focus of attention but the actual physical substance created which has the potential of a commercial manifestation.

- **Case – Eastman Kodak Co. V. American Photo Booths Inc. (2002)**
- A patent related to the photo-booth camera was applied, the patent officer held that since the invention claimed could never work in the manner in which it was described, it could not have any industrial applicability.

• **4. Other Essentials of Patentability –**

- A) An invention to be patentable must be useful. If the subject matter is devoid of utility it does not satisfy the requirement of invention.
- B) It must have commercial or pecuniary value or utility.
- C) The invention must be useful.
- D) It should not be mere theory.
- E) If invention is process, it must result in creation of goods.
- F) The invention must be related to art, technology, process, methods employing in manufacturing & manner of its application in manufacturing.

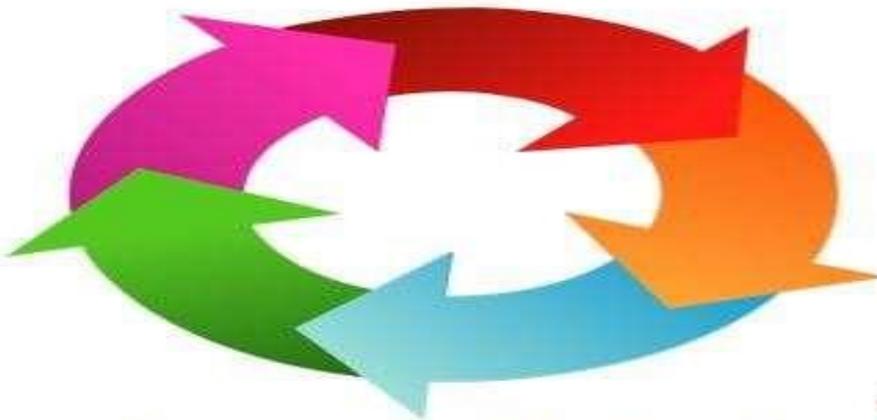
Patents Can Be Granted For



**Products, Devices
& Systems**



Compositions



**Processes, Methods
& Uses**



**But *NOT* For Just An Idea,
Like A Time Machine**

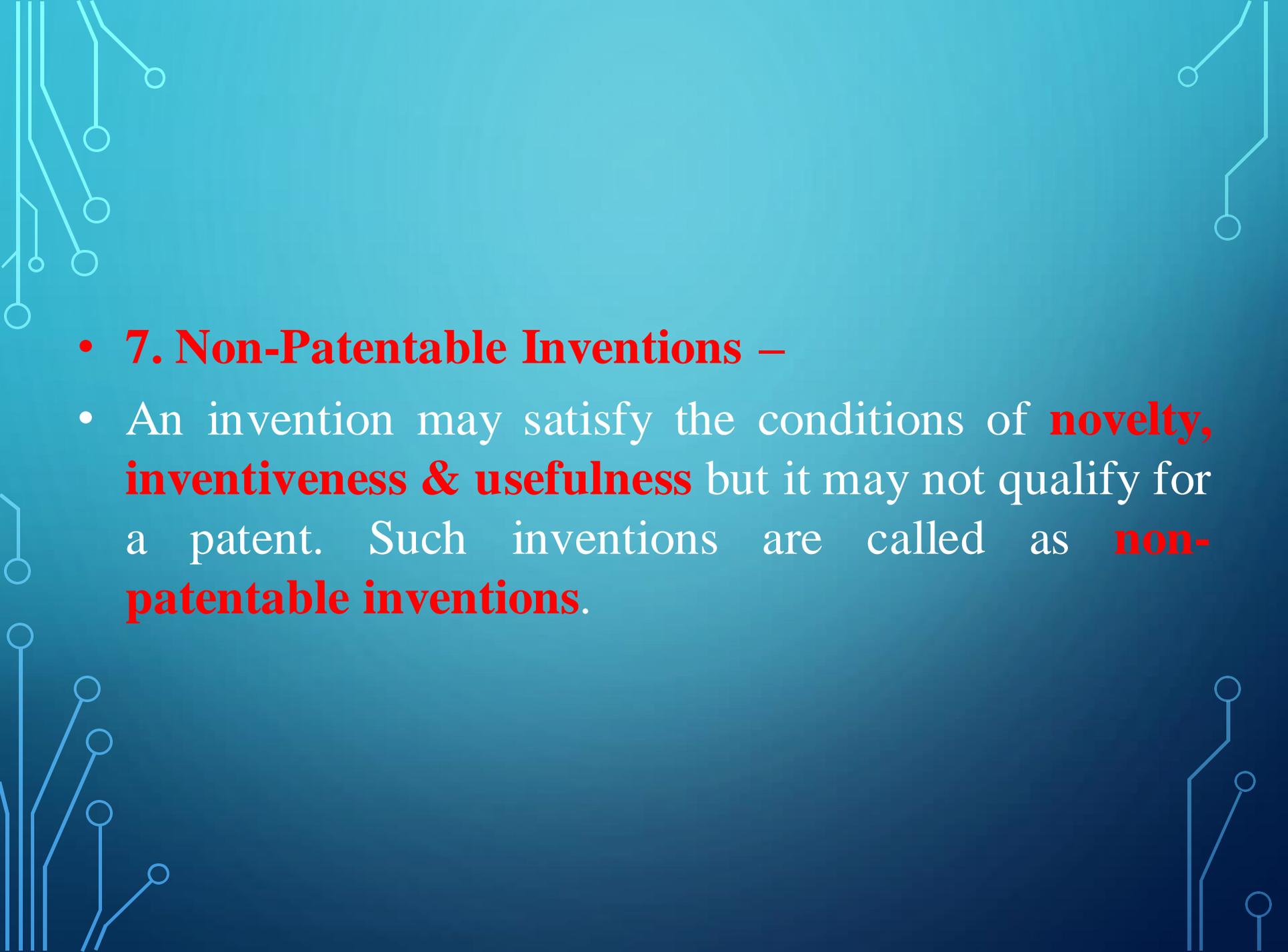
Trademark

- brand name
ex. "Advil®"

Patent

- formulation
- composition
- active ingredient





- **7. Non-Patentable Inventions –**

- An invention may satisfy the conditions of **novelty, inventiveness & usefulness** but it may not qualify for a patent. Such inventions are called as **non-patentable inventions**.

- The following are not inventions within the meaning of **S.3 of the Patents Act, 1970** – so called as **non-patentable inventions** -
 - **A)** An invention which is frivolous/misleading.
 - eg. Any machine or method for counterfeiting of currency notes.
 - **B)** An invention intended to be used contrary to law, public order or morality or injurious to human, animal or plant life or health or the environment.
 - Eg. An invention for adulteration of food products.

- **C)** The mere discovery of the scientific principle.
 - Eg. Finding of a new substance or micro-organism occurring freely in nature is a discovery & not a patentable invention.
- **D)** The mere discovery of a new form of a known substance.
- **E)** A substance obtained by a mere admixture resulting.
- **F)** The mere duplication of known devices.

- **G)** A method of agriculture or horticulture.

- Eg. A method of producing a plant or a method of producing improved soil or a method of producing mangoes cannot be patented.

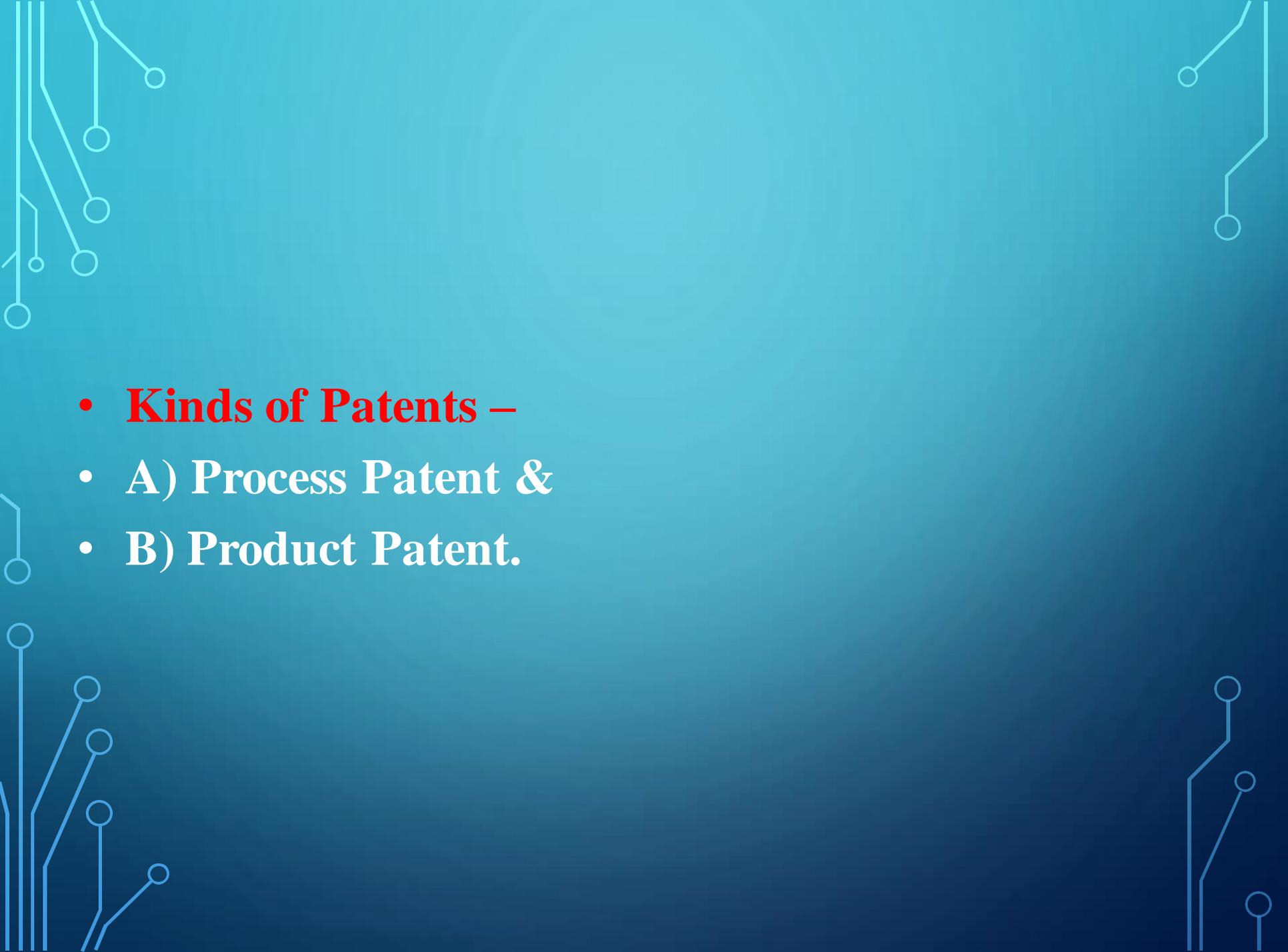
- **D)** Any process in medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings.

- Eg. An operation on the body, which requires the skill & knowledge of a surgeon like embryo transplants or any therapy or diagnosis is not patentable.

- **J) Plants & animals** in whole or any part thereof other than micro-organisms.
 - Eg. Discovery of a new plant or animal or seed in whole or in part is not patentable.
- **K) A computer programme/Mathematical or business model** .
- **L) A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works & television productions.**
 - Eg. A computer software code can be copyrighted but not patented.

- **M)** A mere scheme performing mental act or method of playing game.
 - Eg. A method of playing chess or a method of teaching.
- **N)** A presentation of information.
 - Eg. A speech instruction in the form of printed text is not patentable.
- **O)** Duplication of known properties of traditionally known component.
- **P)** Duplication of known properties of traditionally known component.

- **Q)** Invention relating to atomic energy falling within **S. 20(1) of the Atomic Energy Act, 1962**. This section prohibits granting of patents for inventions which **C/G** thinks useful for or relate to the production, control, use or disposal of atomic energy or the prospecting, mining, extraction, production, physical & chemical treatment, fabrication, enrichment, canning or use of any prescribed substance or radioactive substance or the ensuring of safety in atomic energy operations.
- **S.4 of the Patent Act, 1970** prohibits the grant of patent in respect of an invention relating to atomic energy.

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- **Kinds of Patents –**
 - **A) Process Patent &**
 - **B) Product Patent.**

- The invention for which patent is claimed may be **a product or an article or a process**.
- In case of an article, the patent is the end product or the article.
- In case of a process, the patent, does not lie in the end product, but only in the process by which it is carried. The entire scientific process is to be looked into before granting the process.
- In India, apart from the product & process patents, patents of addition are also granted.

- **A) Process Patent –**

- When a substance is invented or produced, a patent is not granted to the substance itself but it is only the method or the process of manufacture of a substance that is granted a patent. Therefore the patent is granted to the process but not to the product , in this kind of patent.

- **Eg.** Netflix. It is an online-based provider of subscription services. The company's computer-implemented system for renting TV shows & movies to customers was awarded a business process patent in 2003.



- **B) Product Patent –**

- In product patents, the patent is granted not to the method or process of manufacture of a substance but to the substance itself. Therefore in this kind of patent, it is the product that is covered & protected. This kind of patent confers greater monopoly rights to patentee.

- **Eg.** Telephone, computer, bluetooth etc.



PATENT



Types of Patent

Three major types of patent

1. Design Patent :- Anyone who creates a new design for a product can apply for a design patent.





PATENT



Types of Patent

Three major types of patent

2. Patent Plant :- Botanists involved in grafting and crating new hybrid plant forms can apply for a plant patent.



Hybrid Plant

PATENT



Types of Patent

Three major types of patent

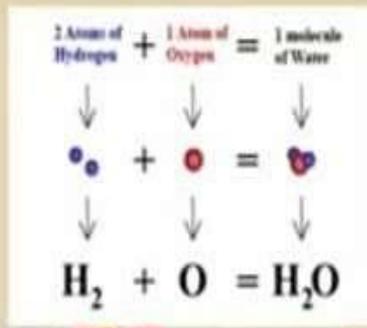
3. Utility Patent :- Anyone who invents or discovers “any new and useful process, machine or any new useful improvement.



PATENT



Patentable items



Hardware

Software

A collection of icons representing hardware (computer monitor, printer, mouse, keyboard, smartphone) and software (Windows, Microsoft Word, PowerPoint, Excel, Chrome).

• **Patents of Addition –**

- Research & development turning out invention & improvement in technology is a constant process. It is quite natural that subsequent to filing of application for patenting & invention the inventor may discover technique improving the invention.
- Patent of addition is a patent granted to the patentee for any improvement or modification of an invention described in the main invention.
- The Controller is empowered to grant such patent of addition on application being made in that behalf.
- The Controller may on request revoke the patent for improvement or the modification & grant to the patentee a patent of addition in respect of it bearing the same date as the date of the patent so revoked.



- **Office of Controller General of Patents, Designs & Trademarks. (CGPDT)**

- Controller of Patents
- Joint Controller of Patents & Designs.
- Deputy Controller of Patents & Designs
- Assistant Controllers
- Examiners
- Scientific Advisors

The background is a dark blue gradient. In the corners, there are decorative white and light blue circuit-like lines with small circles at the ends, resembling a network or data flow diagram.

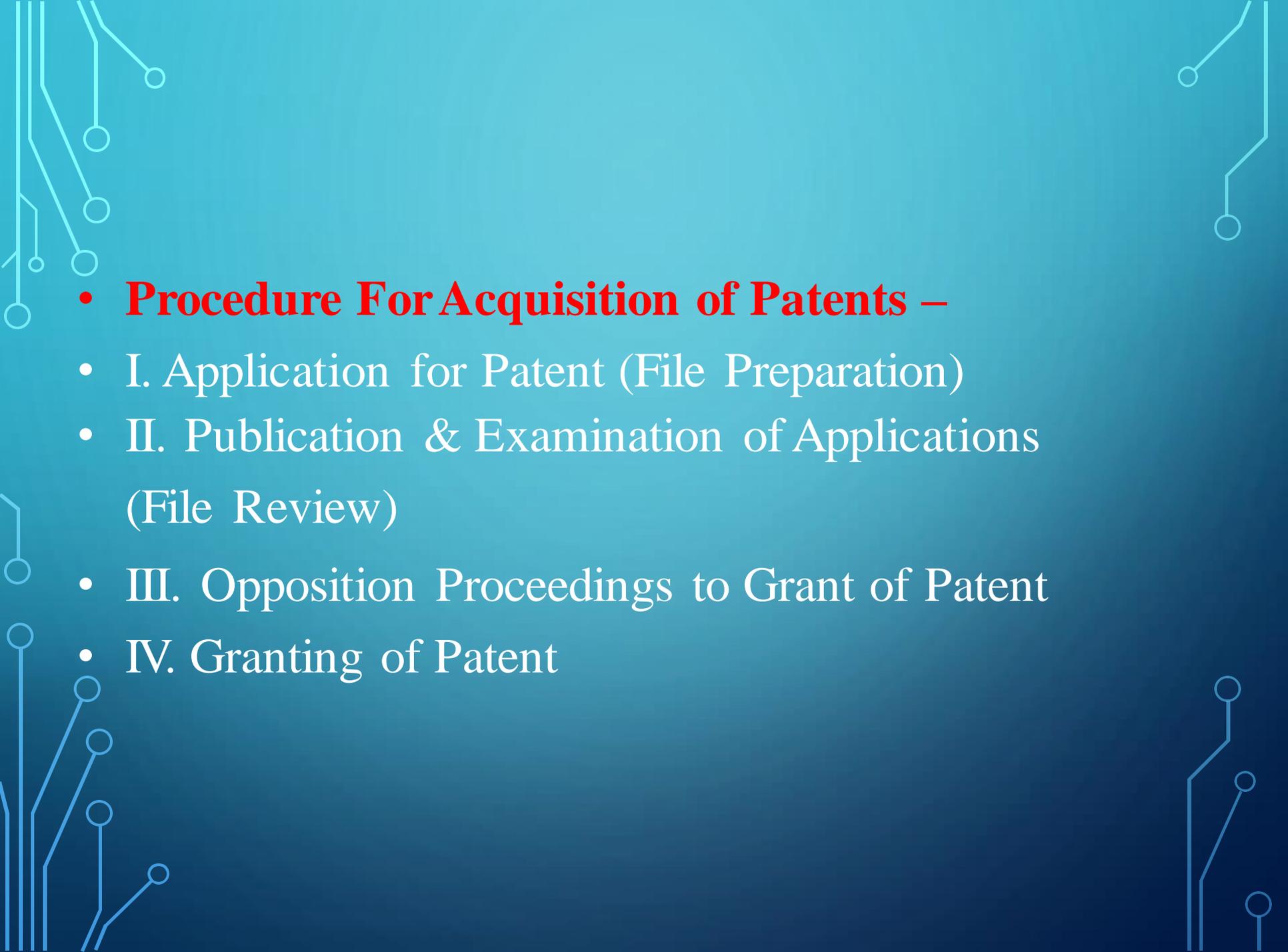
- **CGPDT**

- Head Office – Kolkata

- Zones -East Zone, West Zone, North Zone & South Zone.

- Branches – Chennai, New Delhi & Mumbai.



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- **Procedure For Acquisition of Patents –**
 - I. Application for Patent (File Preparation)
 - II. Publication & Examination of Applications (File Review)
 - III. Opposition Proceedings to Grant of Patent
 - IV. Granting of Patent



- **Procedure For Obtaining Patent –**

- **S. 6- 11 of Patent Act, 1970** deals procedure for obtaining patent to exploit invention for 20 years.
 - Unlike the CR, the invention of person does not get protection of patent automatically.
 - The Act provide detailed procedure which commences from application & ends with grant of patent.
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- **A) Filing of Application –**

- **1. Who Can File Application –**

- Following persons can file applications for patent -

- Any person claiming to be the first inventor.

- Person who is the assignee of inventor.

- Legal representatives of deceased owner.

- In case the invention is made by employee, the application can be filed by either employer or the employee.

• **2. Form of Application-**

- The application shall be made in prescribed form i. e. **Form 2 of Patent Rules.**
- A single application for patent shall be used for single invention only.
- Separate application shall be used for every invention.
- The applicant must state that he is in **possession** of invention & he is **true owner**.
- If **assignee** is applicant, he must submit application with proof that he has right to apply.
- If applicant is **Indian citizen**, the application may accompany **provisional or complete specification.**

• **3. International Patent Application –**

- The International Patent application shall be filed under the **Patent Cooperation Treaty (PCT)(HQ-Washington)(1970)** for Patent in any member country.

• **4. Withdrawal of Application –**

- The application for patent can be withdrawn by the applicant at any time before grant of patent.

• **5. Filing of Provisional & Complete Specification –**

- Where the applicant has submitted provisional specification at the time of filing of application, then complete specification must be filed **within 12 months** from the time of application –
- If the applicant fails to file complete specification **within 12 months**, the application shall be abandoned.

- **What is Specification –**

- The patent specification is a **technical document describing invention**. The purpose of specification is to make it available to public at the expiry of term of patent.

- **S. 10 of the Act** provides list of contents of specification –

- A) Subject to which invention is related.

- B) Full description of invention, it's operation, use & methods of performance.

- C) Disclosure of best method of performance of invention.

- D) Claim & scope of invention.

• **B. Publication & Examination of Application**

• **1. Publication –**

- The application for the patent shall not be open to public for **first 18 months** from the date of application.
- After the expiry of 18 months, the application shall be published **within 1 month** from the expiry of 18 month period.
- The applicant can also request for publication of application.

• **2. Examination of Application –**

- It shall be made only on request by applicant.
- The application for examination of application shall be made **within 36 months** from the date of filing provisional specification.
- The examination of application shall be made **within 48 months** from the date of filing of provisional specification.
- On receipt of request for examination, the Controller shall forward the application to examiner.

- **C. Examination to Grant Patent –**

- **Pre- grant Opposition –**

- Any person can raise objection to grant patent before grant of patent during the period starting from date of application to grant of patent. This is called as **“Pre-grant Opposition”**.

- **Post- grant Opposition –**

- After the grant of patent but before expiry of **period of 1 year** from date of grant –

- Any person can raise objection by written notice to **Controller of Patent.**

• **I. Grounds for Opposition –**

• Any person can oppose the grant of patent by written notice to **Controller**.

• Following are the grounds of opposition –

I) The applicant has wrongly obtained the invention.

II) The invention claimed is previously published.

III) It is publicly known & used in India.

IV) It is obvious invention & does not involve inventive steps.

V) The invention is non-patentable in India.

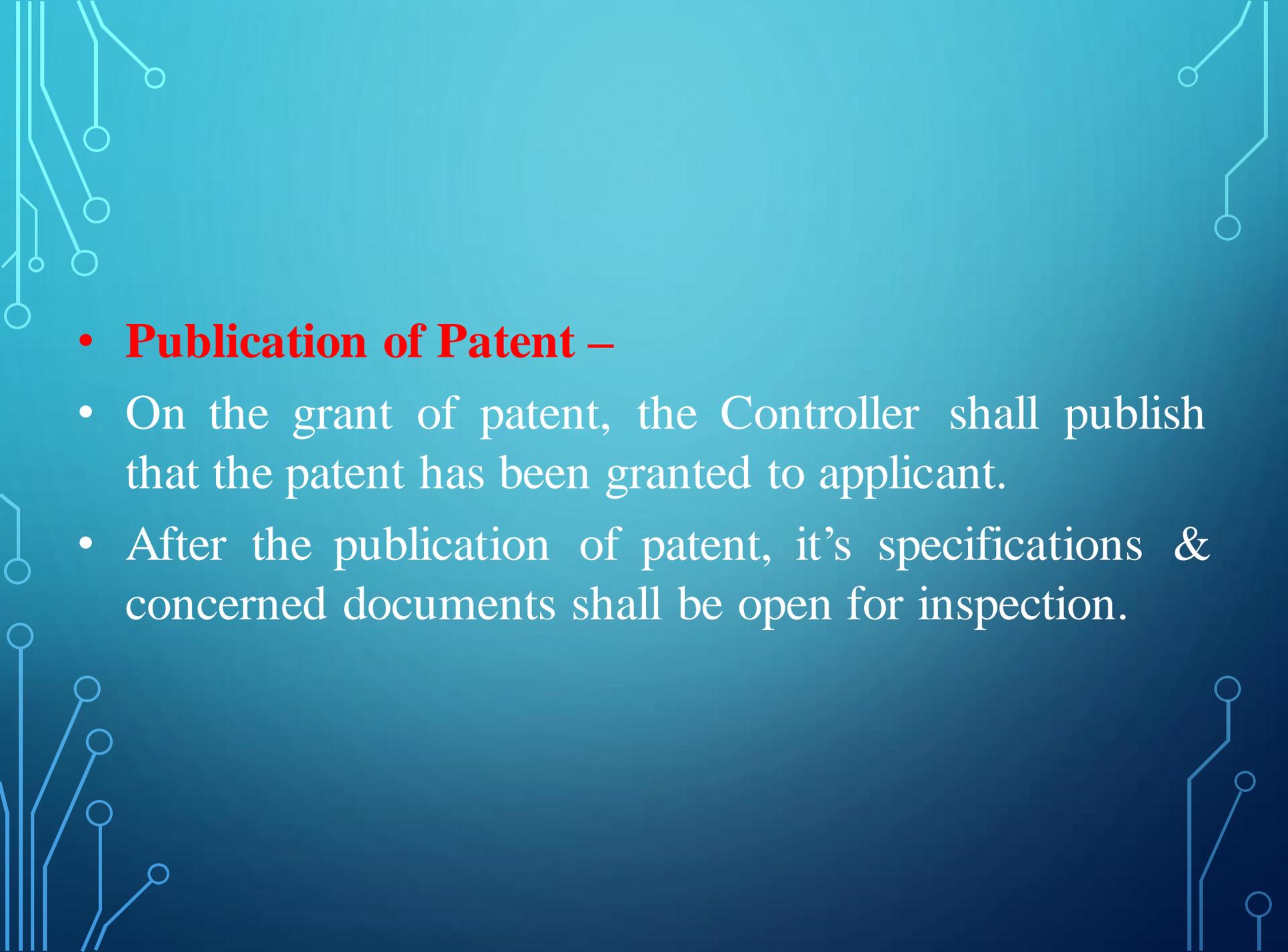
VI) The description & method of performance of invention is not clearly & sufficiently described in complete specification.

• **II. Opposition Board –**

- On receipt of opposition notice, the Controller shall constitute Opposition Board.
- It shall consist of Officers as appointed by Controller & his Office.
- The Board shall after giving opportunity of hearing both patentee & person opposing grant of patent, shall hear the objections & send it's report to Office of Controller.
- Where the opposition is upheld, application shall be abandoned.

• **D. Grant of Patent –**

- Where an application for the patent is found valid, patentable & in accordance with the provisions of the Act, the patent shall be granted as early as possible.
- The Patent Officer or Controller shall make necessary entries in Register maintained for the purpose of Registration.
- The patent shall be with Seal of Office.
- It shall be granted with certain terms & conditions.



- **Publication of Patent –**

- On the grant of patent, the Controller shall publish that the patent has been granted to applicant.
- After the publication of patent, it's specifications & concerned documents shall be open for inspection.

- **E. Date of Patent –**

- **S. 45 of the Act** provides for the date of registration.

- The patent shall be granted from the date of filing of application.

- The date of patent shall be entered in the Register of patent.

- **F. Term of Patent –**

- **Prior to Amendment of 2002**, the term of patent was between **5 years to 14 years**.

- But after this Amendment, the uniformity is brought in period of protection. It is settled for **20 years**.

• **Rights, Obligations & Limitations of Patentee –**

- A patent shall confer on patentee a monopoly right for fixed term. But these rights are subject to certain terms & conditions.
- A patentee has exclusive right to exploit, use, sale or transfer his patent or any right relating to his patent.
- He can exclude others from exercising these rights but it is to be noted that these rights are not absolute.



- **Rights of Patentee –**

- **1. Right to Exclusive Use the Patent –**

- The patent gives exclusive right to the owner to use it exclusively.
 - This right is subject to terms & conditions imposed by Patent Office.
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- **2. Right to Exploit the Patent –**

- **S. 48 of the Act** confers a right on the patentee to exploit the patent.

- It means the patent or the person legally authorized by him can make commercial use of patented invention.

- However, his right is subject to **Government's Power u/s 47** to import or use the patent product for its own use.

- **3. Right to License –**

- If a patentee is not able or willing to exploit the patent himself, he can grant license to some other person & authorize him to exploit the patent & pay him consideration or royalty.

• **4. Right to Assign the Patent –**

- The patentee can fully or partly assign his patent to another person through assignment agreement.
- **S. 68 of the Act** requires that such assignment must be in writing & it must contain information relating to terms & conditions of assignment, term of assignment, description invention, description of rights transferred & consideration for assignment.

- **5. Right to Surrender the Patent –**

- **S. 63 of the Act** empowers the patentee to surrender his patent. A patentee, if wants to surrender the patent, he may offer to surrender the patent by written notice to Controller of Patent.

- After receiving of notice, the Controller shall publish the offer & to notify all the persons whose name appears in the registration of patent.

- On satisfying that, the patentee can legally surrender the patent, the Controller can make decision to that effect.



- **6. Right to Get Duplicate Patent –**

- If the patent is lost or destroyed or it's non-production is sufficiently explained to Controller, the patentee can obtain duplicate patent by making an application in prescribed manner.
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• **7. Right to Seek Legal Remedies Against Infringement –**

- Since the Act confers exclusive rights to use the patent by patentee by excluding unauthorized use by others.
- Any unauthorized use of patent by other is infringement of patent. It amounts to violation of patent right.
- In case of infringement of patentee has right to seek legal remedies including civil & criminal remedies.

• **Obligations of Patentee –**

- **I)** Duty to work out patent & make it available to public.
- **II)** Duty to make it available to public at reasonable price.
- **III)** Duty to furnish information demanded by Controller.
- **IV)** Duty to pay fees every year.
- **V)** Duty to inform Controller about progress & workout of patent regularly.

- **Limitations of Patentee –**

- **I)** Use of patent by Government – in public interest.
- **II)** Acquisition of invention & patent by Government – by payment of compensation.
- **III) Compulsory License** – If reasonable requirement of public is not satisfied or such product is not available at reasonable price to public or if patented invention is not worked in India.
- **IV)** Interested persons can get compulsory license from Controller of Patent.

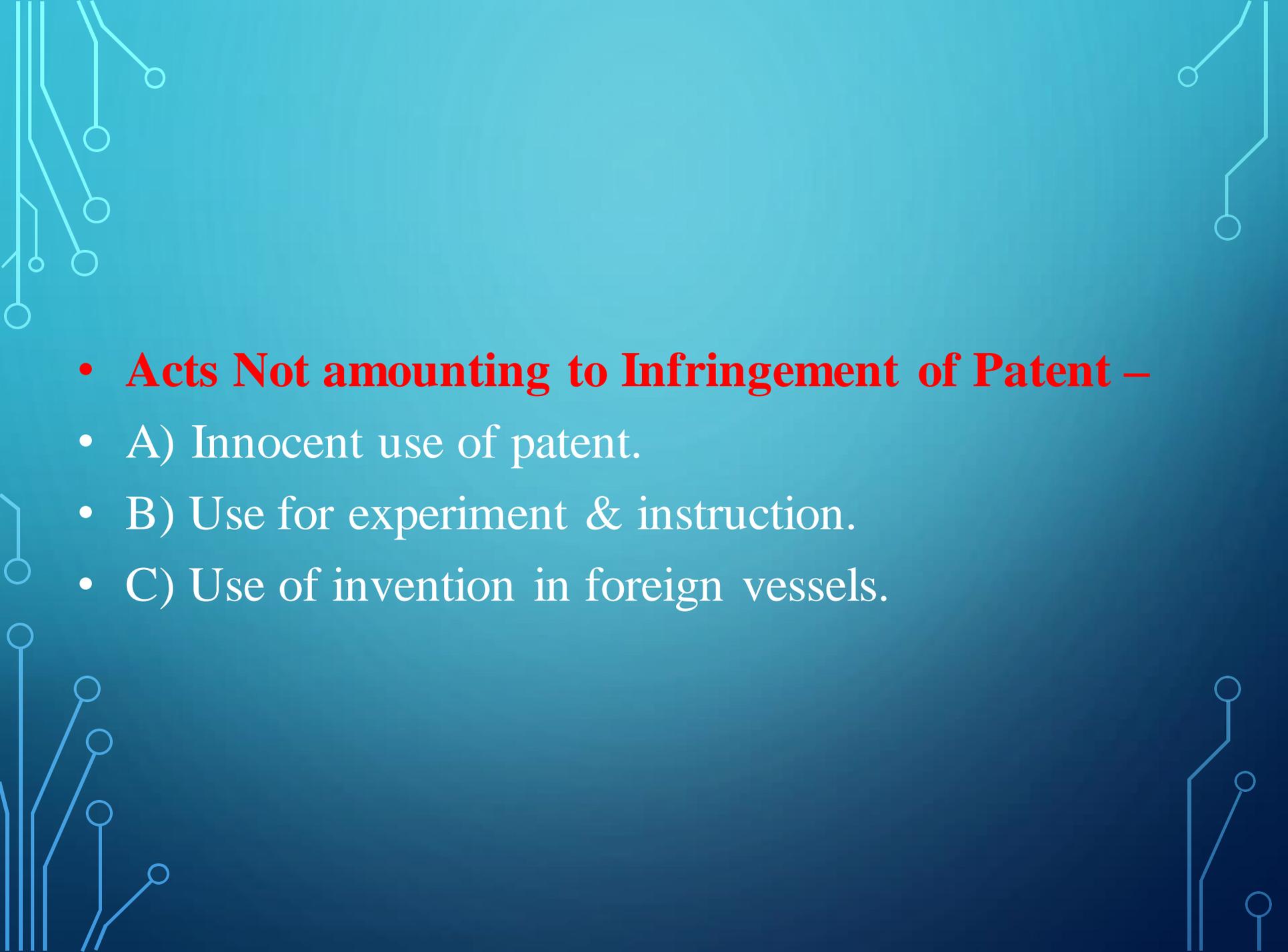
• **Infringement of Patents –**

- The definition of infringement of patent is not given under the Patent Act, 1970.
- The patentee enjoy the exclusive rights of patent. If his right in relation to patent is infringed, he has right to take recourse to legal action.
- Infringement is nothing but the violation of monopoly right of patentee **to make, use, exercise, sell or distribute** the invention in India.



- **Acts amount to Infringement of Patent –**

- A) Acts of actual manufacturing the patented article **without the authority of patentee.**
 - B) Using a patented process **without consent & authority of patentee.**
 - C) Using, exercising, selling, or distributing a patented article or process **without any lawful authority.**
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- **Acts Not amounting to Infringement of Patent –**
 - A) Innocent use of patent.
 - B) Use for experiment & instruction.
 - C) Use of invention in foreign vessels.



- **Remedies for Infringement of Patent –**

- An action for infringement of a patent must be instituted by way of a suit in any **District Court** or a **High Court** having jurisdiction to try the suit.
 - Where the defendant counter-claims for revocation of the patent, the suit along with the counter-claim will be transferred to High Court for determination.
 - **S. 104 – 115 of the Act** deal with the suits concerning infringement of patents.
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- **Limitation Period –**

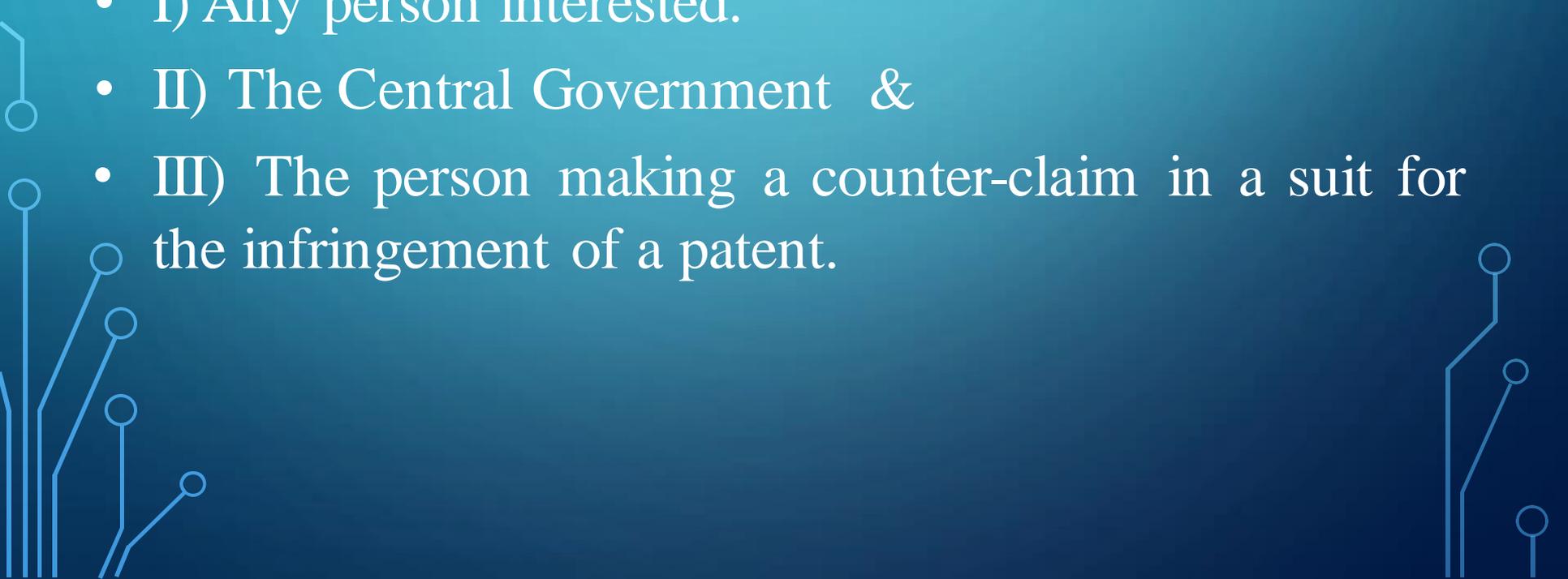
- The period of limitation for bringing the suit is **3 years** from the date of infringement.
- No notice of infringement to the defendant before filing the suit is necessary.

- **Who Can File a Suit ? –**

- A Patentee
- An Exclusive Licensee, if the licence is registered.
- A Compulsory Licensee
- An Assignee
- A Co-Owner/Co-Patentee



- **Who may file petition to the High Court ? –**

- Following persons may file petition to the High Court for revocation of a patent namely –
 - I) Any person interested.
 - II) The Central Government &
 - III) The person making a counter-claim in a suit for the infringement of a patent.
- 

• **Who may be sued ? –**

- Any person who infringes the patent.
- Manufacturers
- Importers
- Dealers, their servants & agents
- A person who threatens to infringe patent.
- In case of a company guilty of infringement, its directors can not be personally sued for infringement unless the evidence establishes the relationship of principal & agent between the directors & the company.

• **Reliefs that may be Granted –**

- Following reliefs are available to a successful plaintiff –
 - I) An Injunction; and/or
 - II) Damages; or
 - III) An account of profits; or
 - IV) An order of deliver-up or destruction
 - V) Certificate of validity of specification; and/or
 - VI) Costs.

• **Defences available to Defendants –**

- **I)** Plaintiff is not entitled to sue for infringement.
- **II)** The allegation of infringement is false.
- **III)** There was permission or licence to use the invention.
- **IV)** The claims alleged to be infringed are invalid.
- **V)** The act complained is covered within the scope of innocent infringement or done after lapse of patent.
- **VI)** The patent is not novel or it is obvious. **Etc.**

- **Penalties for Offences (S. 118- 124 of the Act)-**

- **I) Penalty for contravention of secrecy of invention**

- Invention relating to defense purposes or making an application for grant of patent by residents of India for patents outside India without written permission from Controller attracts the **imprisonment up to 2 years or with fine or with both.**

- **II) Penalty for falsification of entries in Register –**

- Imprisonment up to 2 years/ fine or with both.

- **III) Penalty for unauthorized claim to patent rights – Punishable with fine up to Rs 1 Lakh.**

- **IV) Wrongful use of words “ Patent Office” –**

- Imprisonment up to 6 months or with fine or with both.

- **V) Practice by non- registered Patent Agents –**

- If any person practices as patent agent without being registered as such he will be punishable with fine which may extend to Rs 1 lakh in case of first offence & Rs 5 lakh in case of a second or subsequent offence.

- **VI) Offence by Companies –**

- The company as well as in charge of or responsible for running business will be punished accordingly.



• **Cases on Infringement of Patent –**

• **Apple Inc. V. Samsung Electronics Ltd. (2011)**

• **Patent War between two electronics giants**

• Apple filed suit against Samsung for infringement of patent stating Samsung had been using the designs of I-Phone & I-Pad.

• Apple won the case & received large amount of compensation from Samsung.



- **Dunlop Pneumatic Tyre Co. Ltd. v. Neal (1964)**

- The purchaser of a patented article can carry out repairs to it; however, he cannot manufacture a new article & claim that he had not infringed the patent because in the manufacture he had used an article derived from a patented article sold by its patentee.
- It was contended that the defendants cannot similarly claim, by process of “**reverse engineering**” that their products were new and invented goods. They were clearly inspired by the plaintiff’s products and after purchasing them, copied the main elements; their effort was an act of infringement, which had to be injuncted.

- **Novartis V. Union of India & Others (2013)**

- Novartis obtained patent on ‘Glivec’ medicine useful in Leukemia & intestinal cancer.
- The Supreme Court held that India, is a developing country & the availability of medicines at a cheaper rate is necessary for the lives of 1 billion people. Sec. 3(d) of Patent Act, 1970 prevents by obtaining secondary patent by introducing minor changes in existing technology from these big pharmaceutical companies.
- Held, ‘**Evergreening of Patent**’ not allowed.

- **Patent Cooperation Treaty (PCT) –**

- The PCT assists applicants in seeking patent protection internationally for their inventions, helps patent offices with their patent granting decisions, and facilitates public access to a wealth of technical information relating to those inventions.

- By filing one international patent application under the PCT, applicants can simultaneously seek protection for an invention in a large number of countries.



- **Important** –

- Signed on - 19 June 1970
 - Location - Washington, United States
 - Effective from 24 January 1978
 - Signatories 36 Parties 156
 - Depositary Director - General of WIPO
 - Languages - English & French
- 



- **Need for Introducing PCT -**

- To bring the world within reach.
 - Removes major costs and provides users with additional time to consider their various Patent granting options.
 - Provides a strong basis to the user for Patenting decisions.
 - Is effectively used by the world's major corporations, universities and research institutions when they seek international patent protection.
- 

• **Basic Features of PCT System -**

- Formal examination done by one office.
- Retrieval is carried out by one office.
- International publication done by one office.
- Examination and authorization finished by national office.
- Single application with legal effect in all PCT countries.
- 148 countries and 4 regional patent systems.



- **PCT Advantages -**

- A single application in single language filed in a single country called the international application.
- Provides a strong basis for patenting decisions to the users.
- Harmonizes formal requirements.
- Used by the world's major corporations, universities and research institutions for seeking international patent protection.

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- The slide features a dark teal background with decorative white circuit-like lines in the corners. These lines consist of straight segments and small circles, resembling a stylized PCB or network diagram. The lines are positioned in the top-left, top-right, bottom-left, and bottom-right corners, framing the central text area.
- This single application has the effect of filing simultaneously in different countries (designated countries).
 - Protects applicant from certain inadvertent errors.
 - Evolves to meet user needs.

- **PCT Filing Process -**

- **STEP 1 – Filing of Local application**

- First applicant need to file patent application in home country.

- **STEP – 2 Filing of PCT application**

- Applicant need to file a national application along with international application in one language and need to pay single set of fee. PCT application is to be filed within **12 months** after filing a national application. Priority date is given by the national office.
- PCT application can also be directly filed to RO (receiving office) office of WIPO.



- **STEP – 3 Checking for Defects**

- The check is conducted by the receiving office, it is divided into two parts. The first part concerns the requirements of according an international filing date as set out in Article 11(1) of PCT. The second part concerns the formal and physical requirements under Article 14.
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• **STEP – 4 International Search Report**

- Application is transmitted to an International searching authority. An International Searching Authority search an application and check for a prior art and state of art. They made it clear whether or not document that have been presented is eligible for grant of patent. They establish it on the basis of their written opinion. Within **16 months** from the date of filing, ISR (International search report) will give search report with written opinion.

- **STEP 5 International Publication**

- After submitting the necessary document user application is published, after the completion of **18 months**. Before that an application is kept secret. International Bureau (IB) of WIPO publishes the PCT application. Content of application is disclosed to the general public.

- **STEP – 6 International search**

- Request for supplementary search is filed by the application before completion of **19 months** from the priority date. Under this applicant demand for international preliminary examination.

• **STEP – 7 International Preliminary Report**

- Search authority will give report on patentability, whether or not patent is to be granted. This is to be given within **28 months** by the competent authority.

• **STEP – 8 Enter in National Phase**

- After completion of all necessary requirements patent is granted by national office and likewise patent is granted in all other contracting states. Patent is granted to the applicant before the completion of **30 months** .After this applicant can seek protection.

- **Surrender & Revocation of Patent –**
- **Revocation of patent(S.64 of the Act) –**
- A patent may be revoked at the instance of –
 - I) Any person interested,
 - II) Central Government,
 - III) Appellate Board, or
 - IV) High Court.

• **Grounds for Revocation of Patents –**

- I) Patentee not entitled to patent..
- II) Patent obtained unlawfully.
- III) Invention known to public.
- IV) Invention is not useful.
- V) Description of invention is imperfect.
- VI) Invention claimed is obvious.
- VII) False representation.
- VIII) Invention is not patentable.
- IX) Contraventions of the provisions of the Act.
- X) Scope of claim not properly defined. Etc.

DIFFERENCE BETWEEN SURRENDER & REVOCATION OF PATENT

Surrender of Patent	Revocation of Patent
1. Proceedings for surrender of patent can be initiated by the patentee.	1. 1. Proceedings of revocation can only be initiated by – A) On application made by 3 rd person. B) In a suit for infringement of patent.
2. Surrender of patent is an act of own decision of patentee.	2. Revocation of patent is imposed on patentee.
3. Penalty is not attached on patentee for surrender.	3. Revocation in most cases is penal action.
4. The controller is empowered to accept the offer for surrender of patent & revoke the same.	4. Only the Appellate Board on an application made by person interested or CG or High Court in suit filed for infringement of patent is empowered to revoke the patent.