



THE PATENTS ACT, 1970

Section 11

Priority dates of claims of a complete specification

- (1) There shall be a priority date for each claim of a complete specification.
- (2) Where a complete specification is filed in pursuance of a single application accompanied by—
 - (a) a provisional specification; or
 - (b) a specification which is treated by virtue of a direction under subsection (3) of section 9 as a provisional specification,
 and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.
- (3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed—
 - (a) in one of those specifications, the priority date of that claim shall be the date of the filing of the application accompanied by that specification;
 - (b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.
- (3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.
- (4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.
- (5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.
- (6) In any case to which sub-sections (2), (3), (3A), (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.
- (7) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.
- (8) A claim in a complete specification of a patent shall not be invalid by reason only of—
 - (a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim;
 - or
 - (b) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

CHAPTER IV

PUBLICATION AND EXAMINATION OF APPLICATIONS

11A. Publication of applications.—

- (1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.
- (2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.
- (3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the

application—

- (a) in which secrecy direction is imposed under section 35; or
- (b) has been abandoned under sub-section (1) of section 9; or
- (c) has been withdrawn three months prior to the period specified under sub-section (1).

(4) In case a secrecy direction has been given in respect of an application under section 35, then it shall be published after the expiry of the period prescribed under sub-section (1) or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section—

- (a) the depository institution shall make the biological material mentioned in the specification available to the public;
- (b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted:

Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1st day of January, 2005 shall accrue from the date of grant of the patent: Provided also that after a patent is granted in respect of applications made under sub-section (2) of section 5, the patent-holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing the concerned product prior to the 1st day of January, 2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises.

11B. Request for examination.—

(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.

(2) (Omitted)

(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (3), the application shall be treated as withdrawn by the applicant:

Provided that—

- (i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and
- (ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.

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