

P A T E N T

CONCEPT OF "PRODUCT-BY-PROCESS" PATENT

As Patents remains a primary intellectual property right that is granted to investors and creators by the government in order to protect their new inventions or discoveries for a period of time it lets the inventors safely disclose their inventions to the public, and they are given the protection against people who may make use, sell or import the patented invention without the permission of the patent holder. Given any Patent the primary requisite is its novelty and industrial use and can be obtained for a wide range of inventions be it technological innovations, pharmaceuticals, manufacturing process and even design elements.

What is a Product-by-Process Patent?

Product – by – process (PBP) is a concept of new development ,wherein a product is defined and protected based on the specific process that is used to create it rather than focusing just on the characteristics and features of the product. The scope of this concept is pretty narrow throughout the world and it is arguably taken notice of that the Patents Laws that governs in India is silent regarding this concept. Through the judgement given in the recent case of **Vifor International Ltd. V. MSN Laboratories Pvt. Ltd and Anr.**, the Delhi High Court has shed light on this concept paving way for much more exploration in the concept of product - by - process in the Indian jurisdiction.

The concept of product – by – process is nascent in development in India is however has reached a substantial development in other jurisdictions around the world. According to the guidelines by the United States, the PBP claim is inclusive only with regards to the products made through the disclosed method or process and the patentability of the claim is subject to the patentability of the product.



The European Union guidelines takes a different approach where the process is considered important in order to figure out the features that the particular process imparts to the product. It is said that the fingerprints of the process are tried to be found on the product in order to be patented. The New Zealand IPO sets importance on the process of the product when the product cannot be explained or described without the process.

Though there have been cases that had touched upon this concept of product – by – process before, this particular case stands significant because it delves at depth the patentability and the infringement of product – by – process patent claims in India. In this case, it was observed that the product obtained by using a different process with the same product , then there is no case for infringement.

Thus this case, unlocks a plethora of explorations in the field of patent claims The case has however failed to address the accommodation of this concept within the patents act of India seeing to the scope of acceptability of this concept when it comes to such claims, and thus it provides a wide scope of research and further development in this concept in the Patent Act for the academic scholars which would direct patent rights through a whole new light.