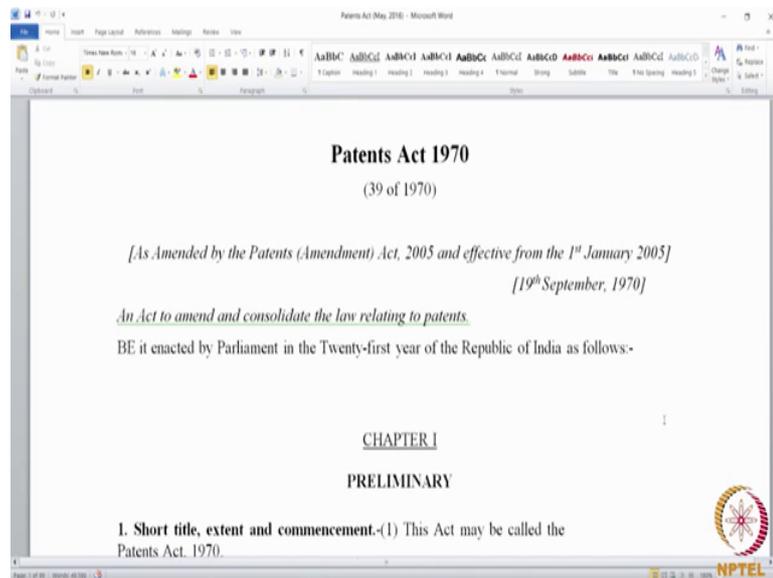


Patent Law for Engineers and Scientists
Prof. Feroz Ali
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Lecture – 03
Introduction to the Indian Patent System
Preliminary Sections

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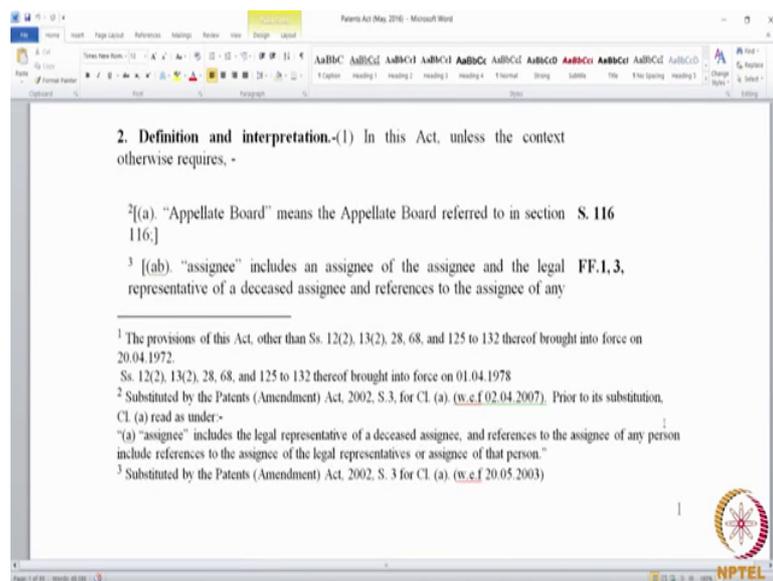
To understand the patents act we had already mentioned that the patent act is structured around the life of a patent. It begins with how a patent is applied the procedure for application who can apply and it goes on to how the patent application is, scrutinized by the patent office patent office will reset an objections which the patent of applicant can answer and eventually after this exchange of information between the patent office and the applicant the patent gets granted if the patent officers satisfied by the explanation given by the patent applicant. So, after it is granted again the patent has to be kept alive by payment of the renewal fees which is again something that happens on the patent office till up until the patent expires.

The patent can expired by reaching the end of its term the 20 year time period or it can expire if the patent is revoked before the appellate board the reserve occasion preceding any granted patent can be revoked by the appellate board or it is challenged in an

rights and it extends to the whole of India.

Some legislations or some acts may not extend to the whole of India there could be exceptions like Jammu and Kashmir may be exempted from the north eastern states could be exempted from the operation of certain laws, but in this case it extends to the whole of India and their act can come into force on an appointed time. So, it is mentioned that the act will come into force at an appointed time this could be the time when the act actually is passed or it could be a time which could be determined later in the patents act certain provisions of the patents act came into effect after the act was passed. So, this is left to the central government to decide when certain provisions of the act can take effect.

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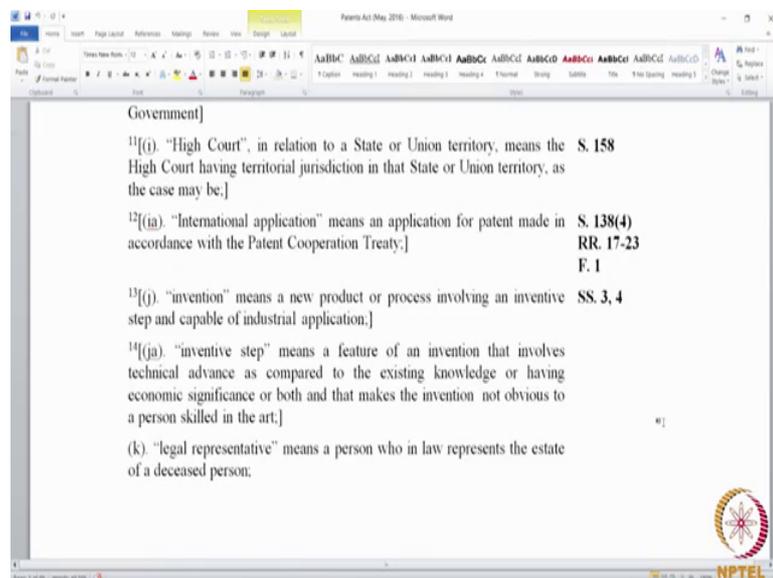


Now, after the title exempt and commencement you have what we call definition clause now definition and interpretation is a clause which defines and gives a particular meaning to words and phrases mentioned in the act. Now what happens if certain words and phrases are not given a definition under the definition and interpretation clause? Now most acts will have a definition and interpretation clause which will have a list of words which are defined to give a particular meaning. Now this particular meaning can be defined in the act if it is not defined elsewhere it can be defined in the definition

clause itself we will see instances where the definition can be contained in the definition clause the definition can also appear in another part of the act not in the definition clause in another part of the act, but the definition clause will say have a cross reference to it.

The definition can also refer to a definition of that particular concept or that particular word to another enactment. So, you have different types of definitions one the definition clause defines the definition in the definition clause itself the definition clause has a cross reference to another part of the act where that word or phrase is defined and definition clause could refer to another enactment all together another enactment passed by the central government where this was previously defined. Now if the definition clause does not define a particular word then we understand that word to take its normal meaning, normal dictionary meaning or the normal meaning in which it is understood. Now we will look at instances where all these four types of definitions appear within the act.

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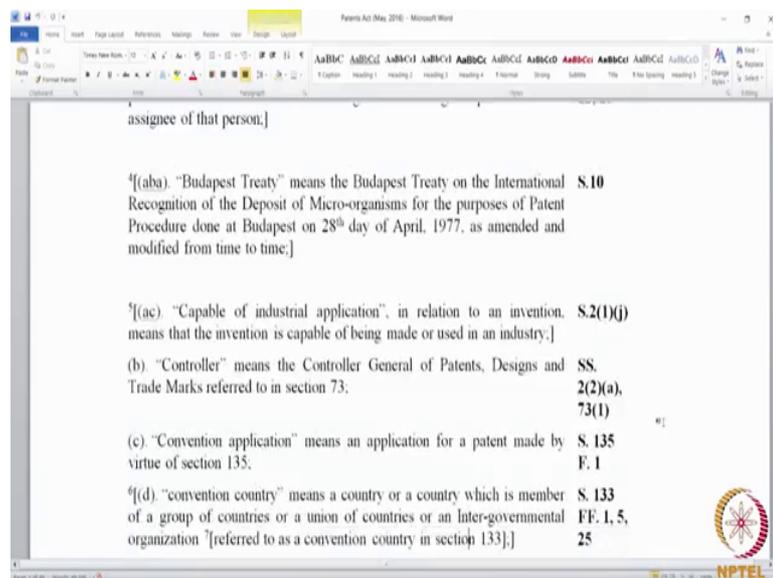
For instance we just found in section 1, we found that the act shall apply to the whole of India and if you come down here you can see that I has entries only three entries India is not an entry international application invention inventive step India is not defined, but section one as you saw India is mentioned there. So, how do you understand the word

India when it is mentioned when it is not been defined. So, we go by the normal meaning of India which is the territory of India the republic of India as it is defined in the constitution now. So, that is one instance of words used, but not defined or a or words that are being used which is there; which is understood normally, but which does not required a special definition.

Now, the second category where a definition is mentioned within the definitional clause. Now, this you will find you can take the definition of an assignee; assignee is a term that is commonly used in law.

Now assignee is given a specific definition assignee includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or the assignee of that person now this is a special definition. Now this goes beyond the normal understanding of assignee because it talks about assignee of a legal representative which is mentioned in the act.

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Similarly Budapest treaty is mentioned it means Budapest treaty on the international recognition of deposit of microorganisms for the purposes of patent procedure done at

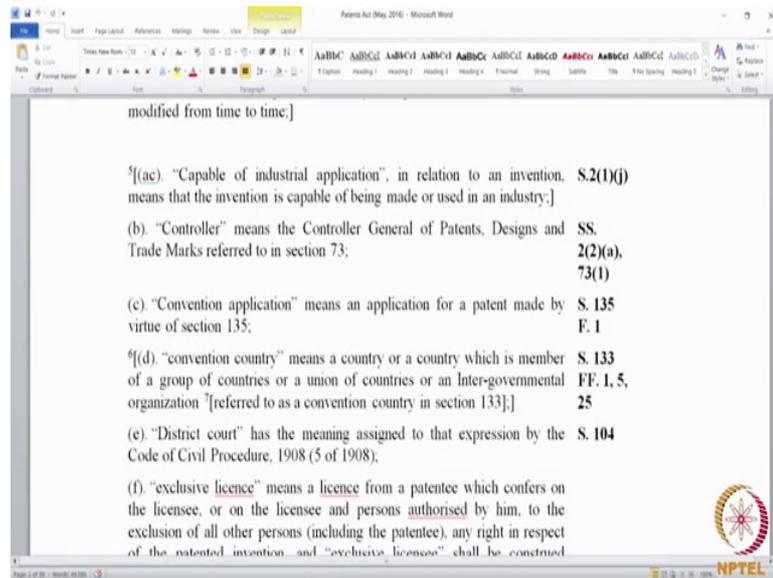
Budapest on 28th day of April 1977 as amended and modified from time to time.

Again this is a special definition. So, the special definition is defined in the clause itself now again if you look at capable of industrial application capable of industrial application appears in the definition of an invention under section 2 1 j. So, on the right hand side in bold font you find the cross references. So, if you find a particular portion of the act what we have mentioned in bold font on the right hand column is the cross references. So, you will know where the capable of industrial application where this phrase is used the phrase is used in section 2 1 j. Now capable of industrial application in relation to an invention means that the invention is capable of being made or used in an industry. So, it just tells you what industrial application is.

Now, these are all instances of an internal definition where the definition is given in the definitional clause that is section 2 in this case now let us look at instances where a phrase or a word is defined, but not in the definitional clause. But by way of a cross reference to another part of the act take appellate board for instance now that is category number to the category number one is something that is defined in the definitional clause like assignee a special definition is given category number 2 is something is defined not in the definitional clause, but by way of a cross reference to a provision to another part of the patents act itself.

Appellate board appellate board means appellate board referred to in section 116. So, to understand appellate board the definitional clause does not tell you what the appellate board is you will have to go back to 116.

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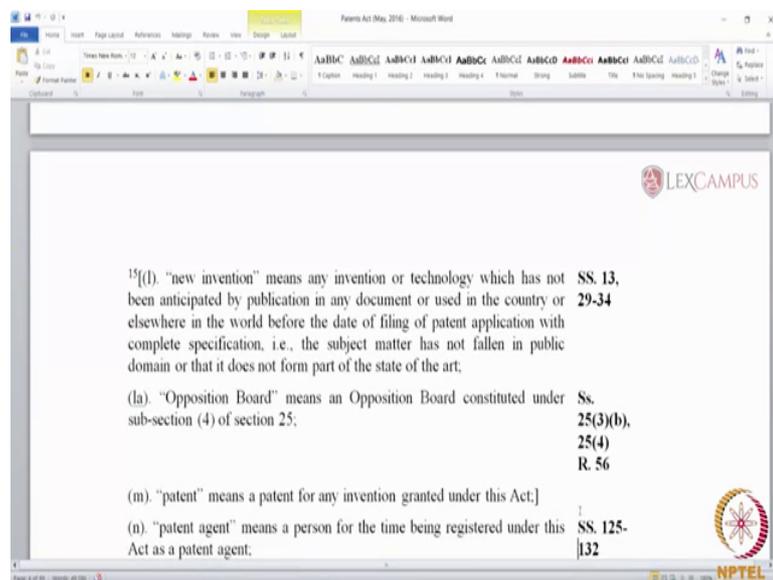
Similarly convention application means an application for a patent made by virtue of section 135. So, to understand what are conventional application is you will now have to read section 135 because it is mentioned in section 135. Convention country again there is cross reference to another part of the act in this case it is section 133. Now this is the second category it is defined within the act, but not in section 2 or it is not defined in the definitional clause and a cross reference is given to where you can find the definition.

The third category is it is defined in another legislation it is defined in another act for instance controller; controller means the controller general of patent designs and trademarks it is a common controller who manages all these portfolios referred to in section 73. Now the 73 you will find that is an internal reference the reference to something outside the act will be district court it is a correction it should be district court not controller; controller again makes an internal reference district court means the mail has the meaning assigned to that expression by the code of civil procedure CPC 1908. So, here is a reference to an outside act and act other than the patents act. So, this is a third category something is defined by reference to another enactment. So, district courts to understand what a district court means you have to look at the code of civil procedure.

Now, this is the third category the fourth category is actually things which are understood

well which do not require a special definition I mentioned the union of India is understood well. So, we do not require the definition for that and there are various other words and phrases used within the act which have not been defined which we understand as things that are understood well and if there is a conflict then you could use external aids of interpretation like a dictionary or like the constitution of India or any other tool that is commonly accepted to give meaning to those words.

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Now the definition clause has various other definitions there is also one category that I want to bring your notice to why should something be given a special definition in an act, why should a word or phrase be given a special definition.

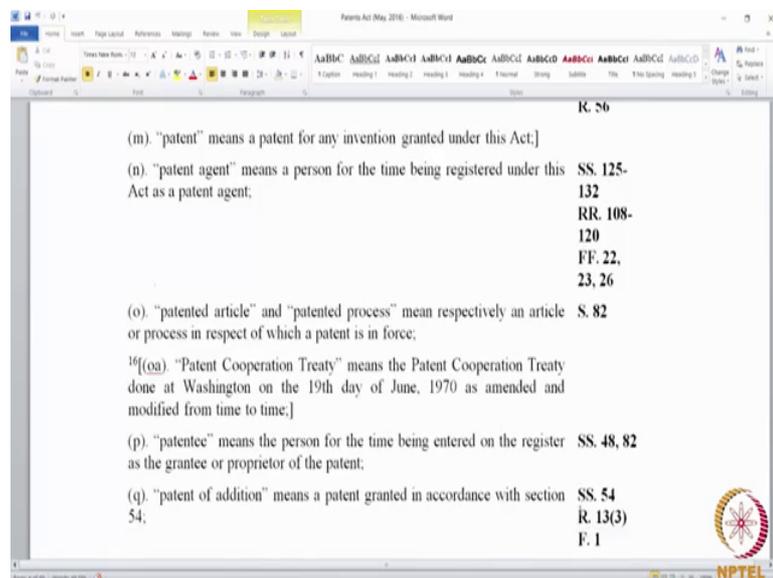
A word or a phrase will be given a special definition because it is used in a special context that is the reason is appellate board is used in a special context in section 117. So, we needed definition because people may not understand what an applet board is. Assignee is used in a special context. So, we need that definition.

So, normally every definition mentioned in the patents act would have been used those words or those phrases or combination of words would have been used in some part of the act. But there is an exception to that section 2 1 1 defines new invention the 2 words

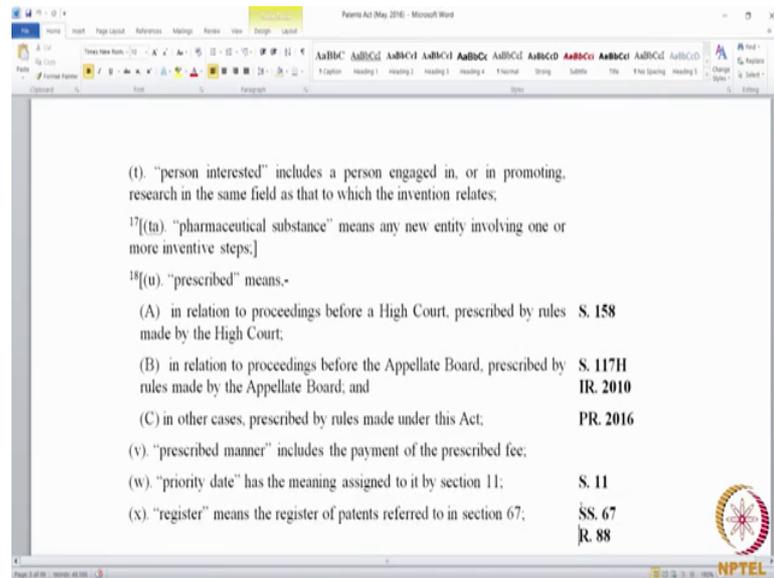
new invention do not appear anywhere in the act next to each other section 2 1 z talks about an invention that is new invention means a new product on process it talks about invention as a new product or a process again it is not use the word new invention together, but from this definition you will expect that the word new invention to be used together within the act in at least one place, but this is not been used.

Now, but then what is the definition doing there, now we understand this definition new invention as something which describes the concept of novelty and when we are covering novelty we will cover this definition, but the new invention is not used anywhere in the act though it is defined as a term. So, that is an exceptional thing, but I just thought I should bring it to you noticed that the new invention which defines the concept of novelty or the words new inventions are not used anywhere in the act though they are defined. So, normally you will expect this to be used somewhere, but the part inside has an instance where it is mentioned a word which is not been used anywhere.

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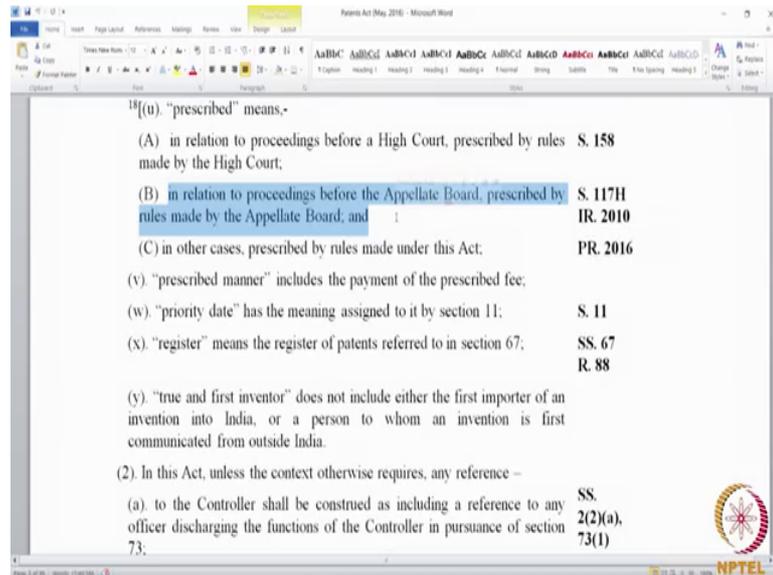
Then you have various other things defined in the act and almost all the definitions mentioned will come within these four categories either they are defined in the definition clause or they are defined in another part of the act or they are defined in another act or we give the normal understood meaning the dictionary meaning or the common meaning as we understand.

Now, prescribed manner includes the payment of prescribe fee. So, whenever the word prescribe manner which appears in the act in various places or word prescribe which again appears in the act. So, in u you will find how the word prescribed can be understood, it can be understood in relation to proceedings before the high court prescribed by the rules of the high court in relation to proceedings before the appellate board prescribed by the rules of the appellate board this is why the 2 appellate board rules that we had mentioned in an earlier lecture as the syllabus of this course because whenever you will look at appellate procedure we will have to go to the prescribed. So, that becomes a part of the syllabus.

In other cases prescribed by rules under this act which is the patent rules 2003. So, it is the word prescribe can take its meaning based on where the proceedings happen if it happens before the high court it will be the high court of rules of that particular high

court high courts do have different rules if it is the appellate board it could be the applet board rules 2010 and 2011 which we had seen or if it is any other prescription then it will be the rules prescribed under the patent rules 2003 that brings us to the end of the definitional clause.

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We will be looking at the definitions in greater detail because their definitions do come back in the various other provisions of the act and in this version of the patents act that you are able to see we also give the cross references.

Now, for instance where we mentioned here a prescribed in relation to IPAB, we have given section 117H as the cross reference and we have given the IPAB rules 2010 as a cross reference because IPAB rules also govern certain parts of how the procedure the procedure that determines the proceedings before the IPAB.