

NOVELTY: MEANING AND UNDERPINNINGS IN UNITED STATES AND EUROPE

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Abstract

The patent is an important branch in the sector of the Intellectual Property law. The invention rather than original work, new creations, distinctiveness and the notion of recognition separates the patent from the other subject matters of the Intellectual Property rights. However, the description of the patent sometimes becomes ambiguous when questions of the discovery and invention, and invention and inventive steps arise. Moreover, the enactment of the patent law from the perspective of the national laws creates the disparity between two national frameworks. This article is an attempt to reflect on the relative meaning of the patent in the United States of America and Europe. The article critically analyzed on the requirements of patentability and the extent of protection in those jurisdictions. In doing so, key points of considerations such as, the background of the patent and relevant provisions on the patents in the United States and Europe, and their justifications have been discussed upon with relevant suggestions at the end. On the other hand, the article tries to find out loopholes in the statutory frameworks if any existing in the US and Europe.

Keywords: Patents, Novelty, Intellectual Property Rights, IPR, Inventions.

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Introduction

In the jurisdiction of the Intellectual Property law, Patent can be considered to be a pillar amongst the three other main parts – Copyright, Trademark and Industrial Design. In the subject matter of the patent, novelty creates a great importance – a benchmark in identifying a good or process with its originality. In addition, the originality should be accompanied with the concept of the invention, meaning a process or idea, which has not been employed by any other person in the world. Now, the patent is provided in order to encourage the inventors to create the new inventions in the arena of the intellectual property law. Novelty is a boon to the economic growth for every country in the modern world. It helps to recognize and commercialize the inventions of the inventors. New thoughts, ideas, creative approaches can be transformed to the patent on the basis of novelty. Even the natural phenomenon can be a part of the novelty through ‘genetic’ and ‘non genetic’ procedures¹. It also creates a healthy competition amongst the inventors and industrialists across the globe. However, the general meaning of the novelty is new. Yet, there is a scope of examining the meaning of ‘novelty’ in the light of critical analysis and the provisions of the legislations available in the

respective countries. Those provisions also provide the foundation of the protection to the originality and the inventions of the inventors. Not only that, it also provides the recognition to the faculty of the mind or the intellect of the inventor. The purpose of this essay is to enlighten on the critical analysis of the meaning of the novelty as well as its basis in the United States and Europe. Therefore, the essay will emphasize on the meaning, regulations in respective jurisdictions with critical analysis in consonance with the novelty.

Novelty

In ordinary parlance, the meaning of novelty is new, yet it consists of one ambiguity. Novelty creates a deep impact upon the patentability of a new invention. For describing under the intellectual property of law, novelty is characterized with invention, and invention is often used interchangeably to discovery. Invention means something which is being disclosed to the market or to the people for the first time ever and it involves some original creation with new idea or imagination which was not pre-existent before a stipulated period of time. That new thought actually leads to materializing new custom. On the other hand, discovery does not always include creativity and the intellect

¹ Ulrich Witt, ‘Propositions about novelty’ (2009) 70(2) JEBO <[https://www.sciencedirect.com/chain.kent.ac.uk/science/article/pii/](https://www.sciencedirect.com/chain.kent.ac.uk/science/article/pii/S0167268109000274?via%3Dihub)

S0167268109000274?via%3Dihub> accessed 3 January, 2020.

of a person. For instance, withering the need of the harmful greenhouse gas, if a filament of a bulb is produced which can be used in substitution to the sunray for resourcing the natural heat to the plants, the invention of restoring and using the artificial ray as a replacement to the greenery can be addressed as novel for its new idea. However, the importance of novelty depends upon the speculation of the invention which sometimes presupposes the discovery of some new thoughts. Hence, the parameter of *ex ante* degree often plays a key role in determining how long the novelty shall keep its uncertainty. In addition, the very trivial detaining within the novelty creates a big difference². Here, it is to be considered whether it is well known to the public or it consists novel aspect altogether. So, novelty can be described as the form of officially obtaining the patentability of a new invention. Therefore, if a product is disclosed to the public before obtaining the patent, its patentability may be harmed or destroyed.

Underpinning Provisions of Novelty

United States

[a] Background

² Ulrich Witt, 'Propositions about novelty' (2009) 70(2) JEBO < [https:// www - sciencedirect- com .chain. kent. ac. uk/ science/ article/ pii/ S0167268109000274? via%3Dihub](https://www.sciencedirect.com/chain.kent.ac.uk/science/article/pii/S0167268109000274?via%3Dihub)> accessed 3 January, 2020.

³ Daniel J. Kevles, 'Patent, Protection and Privileges: The establishment of Intellectual Property in Animal

The structure of the patent in the United States relies on Article I of the Section 8 of the Constitution. The structure of the patent of the country is the reflection of the nation's inclination towards technological growth in the "free market" and "capitalist economy"³. The main purpose of this intention is providing the inventors the "exclusive right" for selling, advertising, using and researching on their own creations during stipulated timeframe in consideration of the disclosure of their inventions to the public⁴. According to Section 154 of Chapter 14 of the United States Code Title 35, the term of the patent is 20 years between the start of the date of issue and ending period of the date on which the patent was applied. The main concept behind this contract in the patent that there should be an award in the form of an "incentive" for the inventor where he can enjoy his right to commercialize his industriousness for his invention⁵. An important point of gaining the patentability is that it should have a use and it is created by the human beings. One another important characteristic of patent as a form of intellectual property is that it should have the ability of reproducing any product with its novel character. Otherwise, it cannot be treated as Intellectual Property. The case of

and Plants' (2007) 98(2) UCPJ <[https:// www- journals- uchicago- edu. chain. kent. ac. uk/ doi/ full/10.1086/518192](https://www.journals-uchicago-edu.chain.kent.ac.uk/doi/full/10.1086/518192)> accessed 4 January, 2020.

⁴ *ibid.*

⁵ *ibid.*

Diamond v. Chakraborty is a notable one⁶, where Ananda Chakraborty was a biochemist in General Electric Company. He had “bioengineered” a bacteria, *Pseudomonas*, for consuming slicks of oil by appearing into the bacterium a “plasmid DNA” from outside, a foreign bacteria⁷. Later, the United States declined the patent to Mr. Chakraborty out of the reason that the microorganism was a part of the nature, rather being formed by a person. Later, the Supreme Court ordered that it is impertinent whether the creation is a living being while considering its patentability. Hence, even though the microorganism was living, it was not the part of the nature, instead it was created by Chakraborty. Therefore, it should be provided patent. In the majority of the Supreme Court Bench, it was held that the “utility patent” could be extensively given to the microorganism.

[b] Noteworthy Provisions

Realistically, neither the Leahy-Smith America Invents Act, 2011 nor the Patent Act, 1952 has successfully and critically defined what the novelty is⁸. The Leahy-Smith America Invents Act, 2011, defines the requirements of applying and receiving the

novelty in due course. However, the AIA Act is different to the Patent Act, 1952 from the perspective of the formation and statutory restrictions. According to Section 102 of the AIA Act⁹,

“a person shall be entitled to a patent unless —

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued to another . . . or in another's application for patent that is published . . . and that was effectively filed before the effective filing date of the claimed invention.”

Here, according to the Section 102 (a) (1), the requirement and also the concept of the patent have been described. According to its requirements, if the previous claim has been provided with the patent or graphically represented through print or disclosed in public before its application for the patent, it cannot be patented. On the other hand, Section 103 (a) (2) depicts that the claim cannot even be granted if the description against which the patent is being claimed has been found in another person's patent.

⁶ *Diamond v. Chakraborty*, 447 U.S. 303, 100 SCt (1980), 2207.

⁷ *ibid* 323.

⁸ Robert P. Merges, ‘PRIORITY AND NOVELTY UNDER THE AIA’ (2012) 27(2) BTLJ <<http://content.ebscohost.com/ContentServer.asp?EbscoContent=>

dGJyMMv17ESep7E4yNfsOLCmsEieprRSs6a4TLsWxWXS&

ContentCustomer=dGJyMPGptEy1qbJPuePfgex43zx1%2B6B&T=P&P=AN&S=R&D=a9h&K=84131671> accessed 4 January, 2020.

⁹ *ibid* 1023.

Additionally, the same cannot be granted if it is found in another person's published work against which the application is being made or has been made. Lastly, the patent cannot be given if the application has been made before the time stipulated for filing the claim. The "disclosure" possesses a great importance in the Act. There are primarily two reasons behind referring the application filed previously as disclosure. The first reason is, it actually tries to gain the belief that the inventor wanted to apply for the patent under the AIA previously. As its obvious outcome, the question of disclosure comes. Secondly, there is an ordinary difference between the disclosure and the public disclosure. If the provision refers only to disclosure, it means that the information about the patent application is acquainted by the "Patent and Trademark Office" and the applicant as well¹⁰. It is to be noted that any application to the PTO is considered to be confidential until it is disclosed publicly. However, when the term public disclosure is referred, it means that the content of the patent application is being disclosed to the public domain. The public then shall have the opportunity to access the subject matter.

According to AIA Act, 2011, there are three foundations with regards to the regulations

which have been transformed from the United States structure of Patent. Firstly, the evidence when the application of patent has been filed; Secondly, if any claim is there related to the previous art which is relevant to this patent application, it has to be made available before the date of the filing of patent; thirdly, the claim of patent by the rivals and consequently, awarding the patent is to be done in accordance to the date of filing the patent by respective applicants. The AIA Act is more straightforward in comparison to the Patent Act, 1952 and it clearly explains the circumstances when an applicant cannot apply for patent. However, there are other provisions which explicitly mention the situations when the application for patent is valid even under the untoward situation¹¹. According to Section 102(b),

"(b) EXCEPTION. -

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a) (1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter

¹⁰ *ibid.*

¹¹ Robert P. Merges, 'PRORITY AND NOVELTY UNDER THE AIA' (2012) 27(2) BTLJ <<http://content.ebscohost.com/ContentServer.asp?EbscoContent=dGJyMMv17ESep7E4yNfsOLC>

msEieprRSs6a4TLsWxWXS&ContentCustomer=dGJyMPGptEy1qbJPuePfgex43zx1%2B6B&T=P&P=AN&S=R&D=a9h&K=84131671>accessed 5 January, 2020.

disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.”¹²

The exception directly mentions the circumstances under which the patent can be filed. According to the exception, if there is any previous patent which has been published within 1 year before the date of the application of the patent, it shall not be considered as the “prior art”. So, this period may be addressed as the ‘grace period’. However, two conditions have been attached under the clause (A) and (B). Under the clause (A), the subject matter has to be disclosed by the person who has the right of disclosure. It may be the inventor himself or the joint inventor, if any, or the person who has been granted the power or the license to publish the document by the inventor or by the joint inventor. It is an exhaustive provision and it indicates that any other but those persons who have been mentioned in the provision cannot be able to disclose the matter. Secondly, the subject matter should not be disclosed to the public before the final disclosure by the same person. There is a scope available to the inventor who has filed for the patent later to eliminate the previous

publication from the earlier art. Section 102(b) 1(B) provides the scope to the third party to disclose the subject-matter of the application. According to the general exception, the inventor must disclose the art before the disclosure by the third party in order to be qualified under the order of the rule. However, the ideal way of removing it is to publish the first form. Therefore, before applying for the patent by the prior applier if the matter is publicly disclosed, it should be removed within the due course. On the other hand, the provision also raises the question why the inventor shall be liable for the agent whom he or she does not know for his or her act of only one or less than one year, even under the circumstance where the timeframe is short and starts unknowingly. One possible answer may be the encouragement to invent more. Yet, this is the timeframe which can still be proven useful for preserving the patent rights of the inventor. However, the flaw of this provision is that this provision has failed to identify which other persons should have the right to disclose the subject matter. Though the provision has the limited scope and it can easily be determined that any person who possesses the license from the inventor or inventors either through direct way or through indirect way to disclose the

¹² ibid 1026.

subject matter, the extension of the term “another person” is ambiguous¹³.

In the Patents Act, 1952, there was a system when firstly the inventions were taken into account unlike AIA. Under the AIA, the date of filing is prioritized over the novelty. It means that now the inventor has to prove that his patent is the first one to be disclosed before the date of filing where the parameter shall be either the filing date or the ambit of the disclosure. The priority primarily means the inventor who will be provided the importance if the question of the two or more inventors arise while filing the application for the patent. On the other hand, the question of novelty arises if at the time of the application, there is any similarity found between the “piece of work” of any prior inventor and the inventor applying for patent¹⁴. The acceptability of the patent there satisfies if there is any evidence which shows the inventor’s effort in showing the genuine novelty before the prior art is taken into account. According to the present “file-to-file” rule, the person who filed first will be taken into consideration rather than taking the question of the novelty into account¹⁵. Provided that, where the person who filed

first steals the subject matter or comes across the invention of the other person, then who shall have the right to file and to obtain the patentability depends upon the discretion of the PTO. Even, if the inventor who filed second discloses the matter to the public before the first filer applies for the patent and if it is found related with the topic of the prior art, then its patentability also depends upon the conscience of the PTO. The one of the main arguments in favour of the “file-to-file” rule is that one applicant can file for the patent at much cheaper rate in comparison to the first-to-invent rule whereas the outcome of the second test is the same, yet many supporters of the second rules states that the first to invent is much fairer concept. Not only that, in major cases, the file-to-file rule has provided the identical results. Article 102 (b) (2) states explicitly mentions about the “grace period” spoken about earlier. There are the three circumstances which have been mentioned through this provision. It has been expressly stated that under the stated conditions, the “prior art” shall not be taken into consideration through disclosure as the invention. Firstly, if any inventor or the owner of patent himself is the applicant for

¹³ Robert P. Merges, ‘PRORITY AND NOVELTY UNDER THE AIA’ (2012) 27(2) BTLJ <<http://content.ebscohost.com/ContentServer.asp?EbscoContent=dGJyMMvI7ESep7E4yNfsOLCmsEieprRSs6a4TLswxWXS&ContentCustomer=dGJyM PGptEy1qbjPuePfgex43zx1%2B6B&T=P&P=AN&S=R&D=a9h&K=84131671>>accessed 5 January, 2020.

¹⁴ *ibid* 1027.

¹⁵ Robert P. Merges, ‘PRORITY AND NOVELTY UNDER THE AIA’ (2012) 27(2) BTLJ <<http://content.ebscohost.com/ContentServer.asp?EbscoContent=dGJyMMvI7ESep7E4yNfsOLCmsEieprRSs6a4TLswxWXS&ContentCustomer=dGJyM PGptEy1qbjPuePfgex43zx1%2B6B&T=P&P=AN&S=R&D=a9h&K=84131671>>accessed 6 January, 2020.

his prior act which has later been obtained by himself for the later work through disclosure; secondly, if the inventor faces the patent filed earlier whereas the applicant had made a disclosure of the patent publicly before filing the patent; thirdly, when the patent which is owned by the identical person and he is also carrying the ownership of the invention. Under the provision, the benefit of the 'grace period' shall not be provided under these circumstances. Yet, the author Robert P. Merges explicitly mentioned the meaning of the "effective filing date" under the provision¹⁶. The term does not include only the filings in the United states, but also those filings done according to other systems or conventions adopted and implemented by the U.S. This also mentions the treaties which have been filed primarily elsewhere, however possesses the benefit of the US law. The author Frederik W. Struve commented that the "file-to-file" rule is stringent in comparison with the previous "file-to-invent" rule because the latest amendment has not provided the independent third party the requisite protection as was in the last form of rule¹⁷. In spite of that, the third party is protected through "file-to-file" format through the grace period and the protection is sometimes at par with the inventor. The

"file-to-file" proceeding has eliminated the ambiguity under the situation where the multiple applications on the same inventions could be confronted with. However, the United States Code 35 speaks about the protection to the domestic as well as foreign patents where the "federal agency" has the ownership¹⁸. According to Section 207, any agency in the federal state shall have the right of protecting the respective patent right through application, acquisition and maintenance. In addition, the agency can protect their patent in the foreign state, if the interest on it is held by the Federal Government. Even, the federal agency has been provided the authority to license another person according to his choice. Here the discretionary power has been provided to the agency while licensing another. He or she may not grant exclusive right, rather may be "non-exclusive" in nature. Yet, the grantee may enjoy the right of authorization without any consideration. It means that the patent can be provided to the licensee even without any royalty. However, it has been explicitly mentioned that the licensee has to conform certain regulations as may be prescribed in the deed of license in consonance with Chapter 29. The chapter 29 deals with the "remedies for infringement of patent and other

¹⁶ *ibid* 1027.

¹⁷ Frederik W Struve, Ending Unnecessary Novelty Destruction: Why Europe Should Adopt the Safety-Net Grace Period as an International Best Practice' (2013) 39 Wm Mitchell L Rev < <https://heinonline-org.chain.kent.ac.uk/HOL/Page?lname=Struve&>

public=false&collection=journals&handle=hein.journals/wmitch39&men_hide=false&men_tab=toc&kind=&page=1404> accessed 5 January, 2020.

¹⁸ United States Code Title 35 – Patents, art 207.

actions”¹⁹. Hence, if any patent of the federal invention is encroached upon by the licensee or where he is responsible, the requisite remedy is available to the licensor. On the other hand, if the licensee himself becomes aggrieved due to the infringement of the patent rights, he may avail the benefit of chapter 29. Additionally, the agency has been provided very wide scope through the words effective measures for protecting and executing the rights as an agent to the Federal Government. It means that the agent has the discretionary power to protect the patent of the federal inventions, according to section 207 (a) (3). In fact, as an example it has been stated under the provision that the agent can collect the royalty and acquire the rights on behalf of the Federal Government. Yet, the power of the agent is not absolute and it has been conditioned explicitly by forming a separate restriction. If the parties who have the free consent to provide the rights to the Federal Government, are only eligible for being considered for this provision. If the parties do not have the voluntary intention to access the license, he or she cannot be considered under this provision. What will be the punishment if the parties are coerced in order to obtain the federal rights of the invention on behalf of the Federal Government? What are the qualifications required to become an agent of Federal

Government? Generally an agent can hold the possession on behalf of the Principle. However, how long can the federal agent hold the right obtained from the party on behalf of the Federal Government? Actually, these are the basic queries arisen out of the critical analysis from this provision. Yet, it can be speculated that the agent can hold the property not more than twenty years which is the maximum time limit for the protection of the patent right. Besides, as the provision is read with Chapter 29, the aggrieved parties may avail the remedies enshrined under the Chapter

Europe

[a] Background

The concept of the “absolute novelty” is absent in the Europe since its inception in the year 1973 through the European Patent Convention²⁰. The inventors applying for the patent are not able to access the absolute novelty against their disclosure. “Absolute novelty” is a situation or condition under which the inventor will be restricted to avail the patent if the invention is disclosed publicly prior to the filing of the patent. The “grace period” like the United States has not been introduced in the Europe²¹. Consequently, if any “unsophisticated applicant” of the patent showcases his or her

¹⁹ United States Code Title 35 – Patents, chap 29.

²⁰ Frederik W Struve, Ending Unnecessary Novelty Destruction: Why Europe Should Adopt the Safety-

Net Grace Period as an International Best Practice' (2013) 39 Wm Mitchell L Rev

²¹ *ibid* 1406.

invention before filing the patent or agreeing for the nondisclosure of the invention, he might face the demolition of the patent and his rights²². However, if it is instituted under the European Patent Convention, the applicants can publish their invention through academic research work. Yet, the benefit of not launching the grace period is that it often proves to be contentious when the question of the monopoly of the inventor arises in the context of the public disclosure.

[b] Noteworthy Provisions

According to the present Article 55 rule of the European Patent Convention, there are two forms of disclosure allowed without any prejudices, where the invention has to be disclosed by the six months of filing the patent²³. Primarily, the invention is secured from the “evident abuse” by any third party, where he or she has the knowledge that the act may create any harm to the protection of the invention or he or she has done the act with *mens rea*. Secondly, any kind of disclosure is allowed if it is done for official purposes or in consonance with the “officially recognized” exhibition²⁴. However, there is a condition laid down with that where it has been stated that the inventor has to acknowledge this while filing for the patent and additionally, he or she must produce

certificate within four months of the exposition. Any scope has not been given to the inventor to rectify the error or avail any relief if exhibition is done before filing any patent. Even, any scholar does not have the scope to find and research on the invention before filing for patent. Hence, it has to be admitted that the protection to the invention in the Europe is really mismatched with the protection in the United States.

However, according to the EPC, the Novelty requirement can be traced in Article 54. The novelty has been discussed under the European Patent Convention. This Article provides a glimpse to the “general approaches” as adopted and applied in the countries like France, Germany, Netherland, Uk etc. The parameters for assessing the novelty have been mentioned under this article for the European Patent Organization. Article 54(1) depicts that a invention must exclude the support or the similarity with the “state of the art”²⁵. An invention cannot be awarded with patent if it breaches this condition. The document of invention could be made accessible to the public if there is the need of acquiring the knowledge by any public member. In addition, there should not be any restriction in publishing the document in public. For speculating the knowledge of

²² *ibid* 1407.

²³ Frederik W Struve, Ending Unnecessary Novelty Destruction: Why Europe Should Adopt the Safety-

Net Grace Period as an International Best Practice' (2013) 39 Wm Mitchell L Rev

²⁴ *ibid* 1420.

²⁵ European Patent Convention, art 4.

the patent, the “prior art” needs to be issued where the person with necessary skill in this area should be provided a scope to teaching of that patent on the date of filing. France applied the Article 54 in their L611-11 (1) of the Code de la propriété intellectuelle (IPC)²⁶. Hence, in the France also, unless and until an invention forms the part of the ‘state of the art’ it can be considered to be a novel²⁷. Yet, it has been mandated in the country that the invention must be disclosed to the public through description, wither through oral or written way. However, the disclosure should be demonstrated with the use or “other way”. Yet, the provision has not mentioned what the way is. In Germany, Section 3(1) of the Patent Act has adopted the provision with regards to novelty with the similar set of the provisions²⁸. Even, in the England, the rules as set by the EPC are followed in the court and where possible so, the court of one country generally takes the observance of the decision of the court of other country. In the case of *Grimme Maschinenfabrik GmbH & Co KG v Derek Scott*²⁹, it has been stated that within the European Countries, a Court of one member state may follow the order of

another member state to that extent that the order of one member state may seem to be erroneous to another member state. The Court following the decision of the other member state may then act as per the authority. This has become the rite within the states of the England, Wales, France, England, Holland and Germany.

Statement

Though each country within the EPC tries to maintain the cordial approach within themselves employing the agreement, a lot of discrepancies are there. Where every stated nations purport to apply the Article 54 for the purpose of acquiring the patent and where the prior art is not taken into consideration, there is no uniformity in implementing those approaches for the purpose of assessing the novelty. For resolving the issue, the Unified Patent Court (UPC) may be a solution. If the UPC is implemented, there will be equity and consistent process in applying the UPC within the meaning of novelty and the infringement³⁰. On the other hand, the “safety net grace period” is equally important in the Europe³¹. The grace period will actually

²⁶ Paul England, ‘Novelty of Patents in Europe and the UPC’ (2017) 12(9) JIPLP < <https://academic-oup-com.chain.kent.ac.uk/jiplp/article/12/9/739/3884442>> accessed 7 January, 2020.

²⁷ Paul England, ‘Novelty of Patents in Europe and the UPC’ (2017) 12(9) JIPLP < <https://academic-oup-com.chain.kent.ac.uk/jiplp/article/12/9/739/3884442>> accessed 7 January, 2020.

²⁸ *ibid* 742.

²⁹ [2010] EWCA Civ 1110.

³⁰ Paul England, ‘Novelty of Patents in Europe and the UPC’ (2017) 12(9) JIPLP < <https://academic-oup-com.chain.kent.ac.uk/jiplp/article/12/9/739/3884442>> accessed 8 January, 2020.

³¹ Frederik W Struve, ‘Ending Unnecessary Novelty Destruction: Why Europe Should Adopt the Safety-Net Grace Period as an International Best Practice’ (2013) 39 Wm Mitchell L Rev < https://heinonline-org.chain.kent.ac.uk/HOL/Page?lname=Struve&public=false&collection=journals&handle=hein:journals/wmitch39&men_hide=false&m

help the researchers in the university publishing their inventions with proper patent rights. They have the scope to commercialize their inventions. Moreover, the small and medium-sized businesses, which are unsophisticated party, in the Europe cannot proceed due to their limited scope under Article 55. They have even fewer funding in comparison to the large scale businesses for developing their respective invention and acquiring patents. Besides, the majority of the corporations in the Europe are SMEs. Therefore, this is the high time to accept the grace period in the Europe by the SMEs. The researchers in the universities cannot acquire the benefit and commercialize their inventions due to not granting those inventions the right of patent which have already been come across in public. For averting these hostile situations, it is needed to amend Article 55 and adopt 'the safety net grace period' in Europe.

Conclusion

As discussed, the novelty has dragged a great revolution across the globe where the United States and the Europe are not the exception. Especially, United States has developed remarkably with the advent of the AIA.

However, some impropersness should be changed for applying the patent law more aptly. There is no definition to the novelty given even after amending Patents Act 1952. It makes the proper concept of the novelty ambiguous. In addition, the new concept of first-to-file amending the first-to-invent definition has not harmonized with the global system and approach of the patent law. Even, the Federal Government has not provided clarification to its enactments. If the Europe is being taken into consideration, the main problem is that it has not recognized the concept of the "absolute novelty" perishing the rights of those persons who have unintentionally previously exhibited their inventions. It will provide unnecessary advantage to sophisticated persons who could apply availing the grace period whereas the aboriginal inventors may suffer due to not attaining the goal. Whereas the countries like Korea, Japan, United States have adopted the safety-net period, the European Patent Convention is lacking it. Hence, if these issues are acknowledged and resolved through proper implementation of the amended regulations, the main goals of the patent will be achieved in true sense.

en_tab=toc&kind=&page=1404> accessed 7
January, 2020.