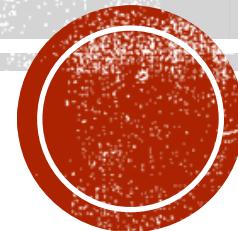


# DEFINING AN INVENTION

WORKSHOP ON IDENTIFYING, DEFINING, AND ASSESSING INVENTIONS FOR PATENT PROTECTION STRATEGY

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# WHAT'S AN INVENTION



- A new idea
- A new thought
- A possibility, plan, a concept
- A theory, a new proposal
- A new solution
- A new product
- A new process



# RADICAL AND INCREMENTAL

- **Disruptive**, out of line, out of normal course of things
  - Eg: Digital age: Internet, smart phone
  - Others: Antibiotic, steam engine, radioactivity
- **Incremental**: Advances that enable the progress of the field
  - More frequent
  - As valuable
  - Benefits market-competition and price



# LEGALITY

- A new product or a new process.....-TRIPs, IPA
- Patents are rights vested on an invention
- Hitherto unknown
- Not in public domain (thru print or electronic media or oral communication)



# Product

# Process

Composition,  
Formulation, Kit,  
Compound, Polymer

Phone, engine,  
machine, scaffold,  
apparatus, device

System algorithm,  
code, genetic  
sequence

Process of  
manufacture,  
process of synthesis,  
process of  
preparation, making

Method of diagnosis,  
treatment,  
prevention,  
detection,  
identification



# METHOD V PROCESS

Method and process are two terms often used interchangeably, but they have distinct differences. A method refers to a specific technique or approach used to accomplish a task or solve a problem. It focuses on the steps and procedures involved in achieving a desired outcome.

A process is a broader concept that encompasses a series of interconnected activities or steps that are undertaken to achieve a particular goal. It involves a systematic and organized approach that may incorporate multiple methods. While a method is more specific and focused, a process provides a comprehensive framework for achieving desired results.



# Assessing an invention for patentability



# INVENTION

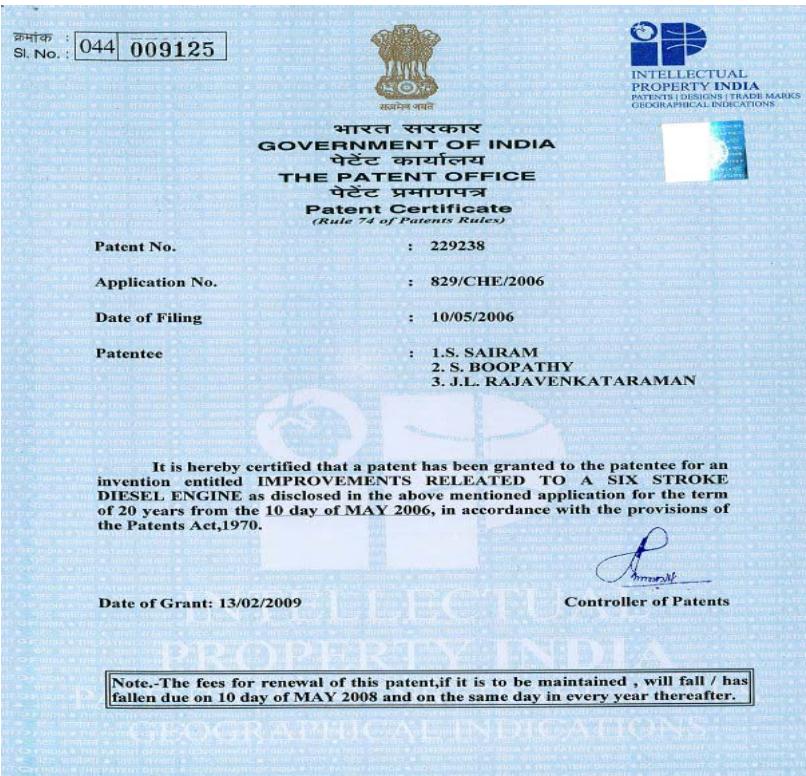
## Section 2(1)(j)

**"invention"** means a new product or process involving an inventive step and capable of industrial application;



# PATENTS

## TRIPs Part – II, Sec.5 Art. 27 to 34



Patent is an exclusive right granted for an invention, which may be a product or a process.



# WHAT IS A PATENT ?

- A patent is a protection given to a patentee for an invention for a limited term **(20years)** by the government for disclosing the invention
- Right to exclude others from manufacturing, using, offering for sale, selling or importing your invention (MOUSI).
- Owner has a qualified right to use the invention

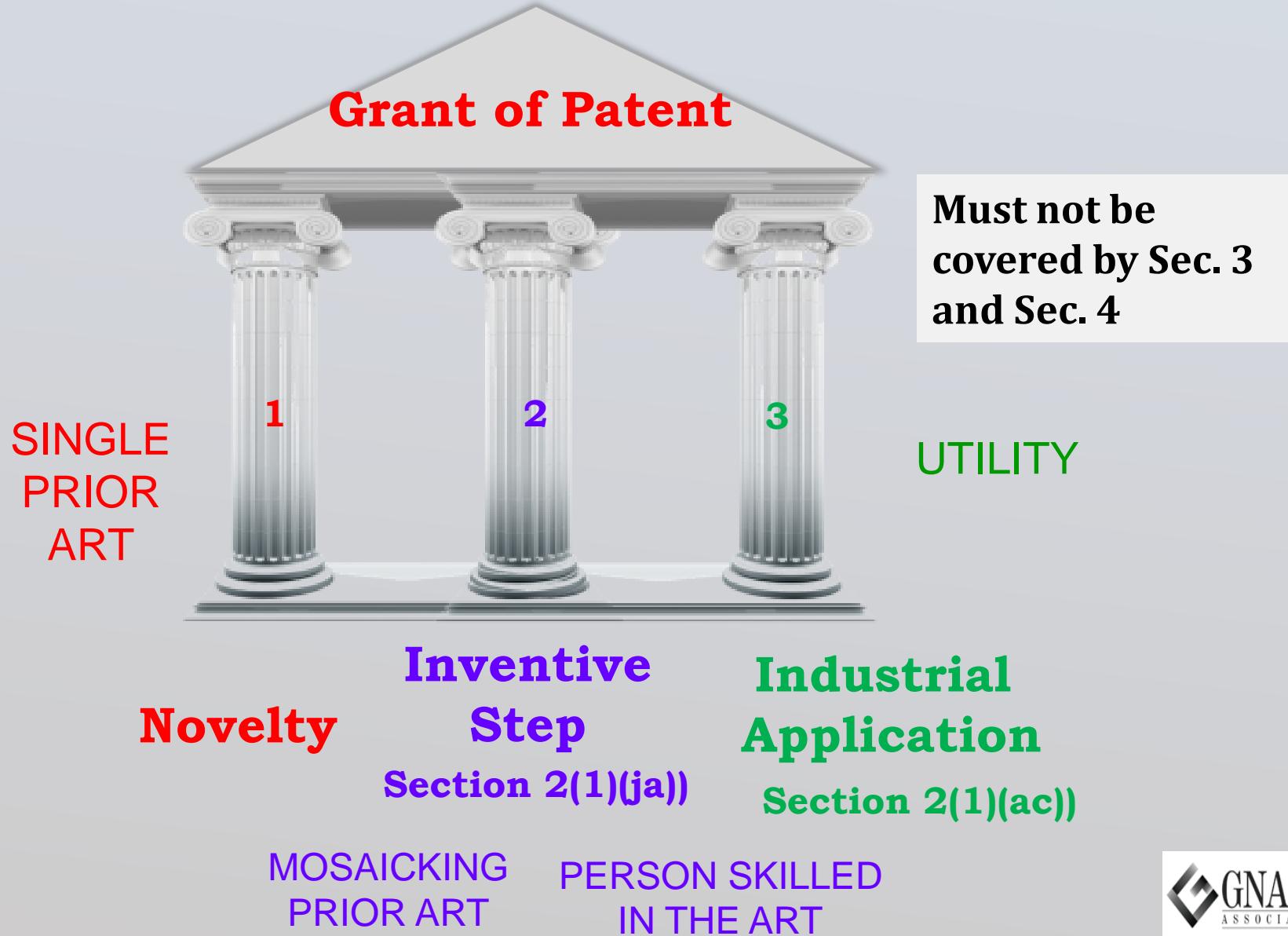


"I tried reinventing myself, but someone already has the patent."

# Negative Right



# Three Statutory Pillars for Patentability as per the Patents Act, 1970



# THREE PILLARS

An invention can be patented if it is

➤ **Must be NOVEL**

- Must be New
- Must DISTINGUISH from “State of the Art”  
(Prior Art)

➤ **Must have INVENTIVE STEP**

Must be Non-obvious to a  
“Person Skilled in the Art”

➤ **Must have INDUSTRIAL APPLICATION**

Must be Useful  
Must have Utility

# EVALUATION

Inventions having

NUNS

Test

✓ NOVELTY:

✓ Single Prior Art / Superimposable

✓ INVENTIVE STEP (Non-obvious):

✓ Mosaicking for obviousness

✓ INDUSTRIAL APPLICATION:

✓ Utility



Statutory  
Subject  
matter  
Sec 3a-p,  
Sec 4

# INVENTIVE STEP

## Section 2(1)(ja):

**“inventive step” means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.**

# NON-OBVIOUS

THE DIFFERENCES BETWEEN THE CLAIMED INVENTION and the PRIOR ART are such that the subject matter as a whole WOULD NOT HAVE BEEN OBVIOUS at the time the invention was made to a PERSON SKILLED IN THE ART, to which the subject matter pertains.

# OVERCOMING NON-OBVIOUSNESS OBJECTIONS

- Not a mere workshop or routine (expected) improvement
- Improvement in quantitative parameters
- Comparative data-literature or experimental based
- Long standing problem in the art
- Unresolved need
- Teaching away from the invention
- Include the surprising effect in the Claim
- ***new result, or a new article or a better or cheaper article than before***
- ***Mere collection of more than one integers or things, not involving the exercise of any inventive faculty***



# NOVELTY VS OBVIOUSNESS

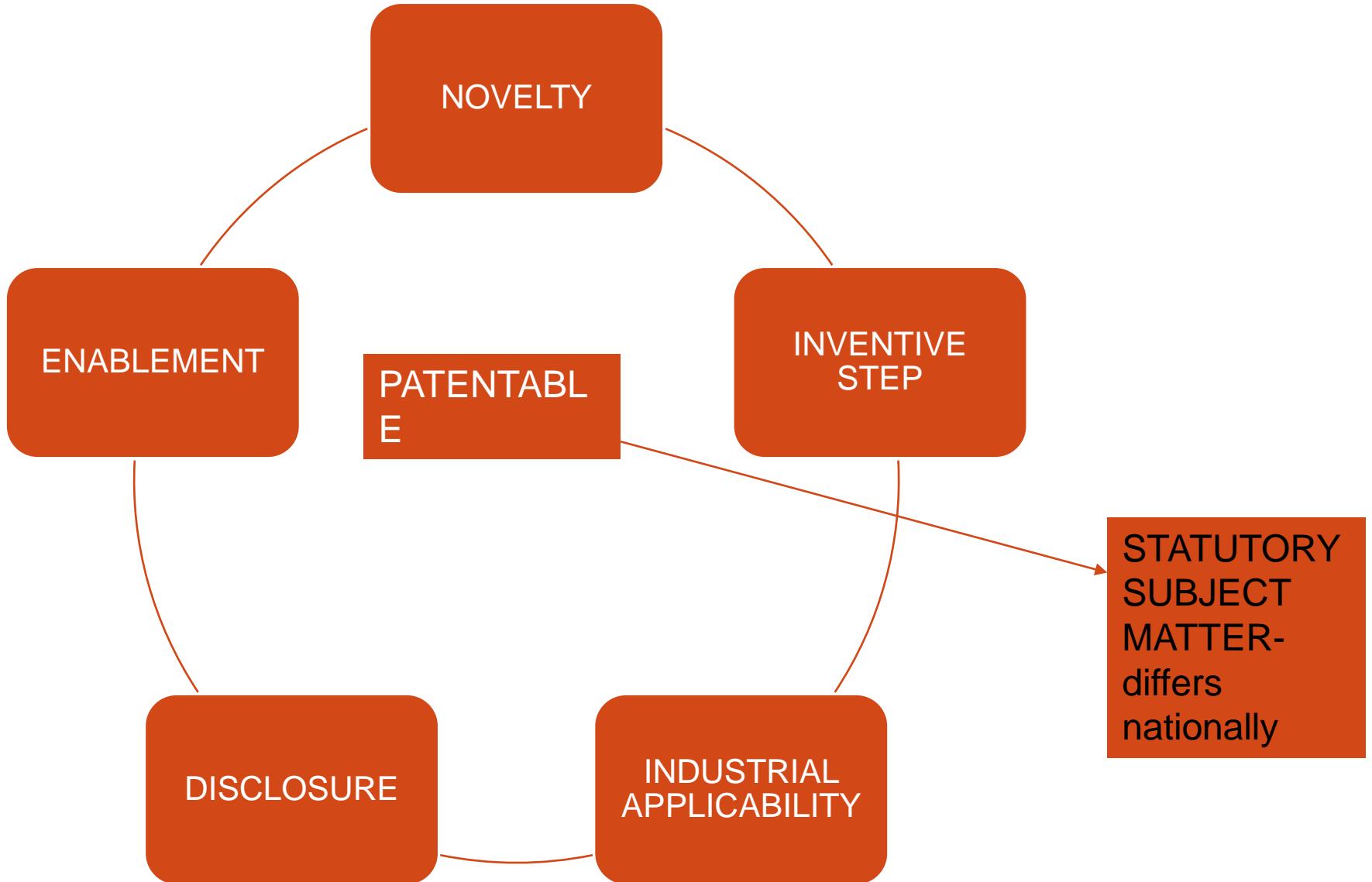
In order to demonstrate lack of novelty, the anticipatory disclosure must be entirely contained within a **single document** either explicitly or implicitly. If more than one document is cited, each must stand on its own, or the documents so cited are linked in such a manner so that they form a continuous document.

The cumulative effect of the disclosures cannot be taken into consideration nor can the lack of novelty be established by forming a **mosaic of elements taken from several documents**. This may be done only when arguing **obviousness**.

# INDUSTRIAL APPLICATION

Section 2(1)(ac):

**"capable of industrial application"**, in relation to an invention, means that the invention is capable of being made or used in an industry;



# THANK YOU

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