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What is patentable?

'Originality' may be said to be a *sine qua non* for enjoying protection under the patent system. But every achievement of human effort where originality has been displayed is not capable of being protected by means of patents. Patents are granted for 'inventions' only, and the term 'invention' may be defined as 'any manner of new manufacture'. It is obvious from this definition that patentable subject-matter should possess 'novelty' and should be essentially a 'manufacture'. It has, however, been held by the courts that anything which is a 'manufacture' and which has 'novelty' is not necessarily a 'manner of new manufacture' and that in order to fall within the scope of the latter expression the subject-matter should necessarily be the outcome of 'inventive ingenuity'. . . .

Now, one of the cardinal principles of the modern patent system is that under no circumstances must a patent interfere with the rights of an individual to make use of any manufacturing processes or apparatus which has come to his knowledge, unless the right to the exclusive use of such process or apparatus has been previously reserved by someone else. In the ordinary course, he may obtain this knowledge by seeing the process or apparatus actually at work in a factory or in a show-room, or at a demonstration or at an exhibition; or he may obtain it by reading a description of the process or apparatus in a publication, or by hearing an account thereof by way of lectures. The information which is thus made available to the public before it is protected by applying for a patent for it, is taken as being unconditionally dedicated for general public use, and as such, cannot thereafter be monopolised by anyone, including the author of the information. This principle, however, is completely disregarded by many scientific workers. . . .

For example, a large class of inventors are under an impression that for establishing their prior claim to inventorship, they should publish an account of their researches in scientific journals, at the earliest possible opportunity. They seem to forget for the time being that the patent system not only provides them with an equally well recognised means of establishing their priority, but has the added advantage of retaining their proprietary rights over their inventions. By rushing to the press in the first instance, they lose once for all their proprietary rights over the invention published, because the moment an invention is published without applying for a patent for it, it becomes the property of the public. Inventors of this class should therefore remember that even if they are anxious to establish their priority of inventorship, it is advisable for them to file their patent applications at least simultaneously with the publication of their inventions in the scientific journals, if not before such publication. . . .

The practical aspects of 'novelty' may therefore be summed up as follows:

(1) before undertaking researches of practical utility, research workers should in the first instance, study the patent literature available on the subject;
(2) as far as possible, the results of researches should not be disclosed to others before taking proper steps to protect the inventor's right;
(3) if, however, it becomes absolutely necessary to disclose the inventions to contractors, capitalists or co-workers, even before applying for the patent, care should be taken to enjoin secrecy; and where possible, evidence should be created of the confidential nature of the disclosure; and
(4) if there is an idea of patenting an invention, the invention should not be worked for profit before applying for a patent therefor.

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