



Plurality of invention, divisional patent and law: An analysis

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Abstract

The article discusses about the divisional patent regime and its purpose along with the procedure. Various jurisdictions like United Kingdom, United States, Europe and India are having the divisional patent as part of their Intellectual Property Laws. The issue with Indian legal system regarding divisional patent i. e. *Plurality of patent* and *Unity of Patent* is discussed with the help of Statutory provisions and decided cases. The opinion expressed by the courts in *Boehringer case* and *Syngenta case* are discussed in details. The legal issues associated with divisional patent are also discussed.

Keywords: Divisional patent application, plurality of invention, unity of invention

Introduction

A divisional patent is a type of patent application that is filed to divide or separate out a part of an original or parent patent application. This concept is particularly relevant in the context of utility patents, which cover new and useful inventions, processes, or products.

The content of an application can be separated via divisional patent applications, which fulfils the objective of ensuring that each application, including the parent and all divisional, focuses on a unique invention. This, in turn, makes it possible to conduct a more accurate evaluation of these inventions and to safeguard them. When filing a divisional application, applicant can retain the benefit of the initial filing date of the main original application while staking exclusive claim to one or more of the independent innovations that were initially submitted in the parent application. However, you cannot stake claim to all of the inventions. It is very necessary for each application to keep a laser-like concentration on a single invention or a "group of inventions, so interrelated as to constitute a single overarching inventive concept" in order for the application to be considered valid. Article 4(G) of Paris Convention for Protection of Industrial Property provides-

1. IF the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.
2. The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized."

Divisional patents are used when the original patent application encompasses more than one invention or a group of closely related inventions. When the patent examiner determines that the original application includes multiple distinct inventions, they may request the applicant to file divisional applications. The purpose of divisional patents is

to ensure that each distinct invention receives its own separate patent protection.

A divisional patent application is a type of application for patent grant that is filed when an original patent application contains multiple inventions. When a patent examiner determines that the original application covers more than one distinct invention, they may request the applicant to divide the application into separate divisional applications. Each divisional application is typically based on the original application and claims a separate, distinct invention. The divisional application may retain the priority date of the original application. Divisional patents are a way to address situations where an applicant has disclosed multiple inventions in a single application but only wishes to pursue one of them. By filing divisional applications, the applicant can protect each invention individually.

As discussed above A divisional patent is a type of patent application that is filed to split a previously filed application into two or more separate applications. This typically occurs when the original application covers multiple inventions, and the applicant or the patent office determines that the inventions should be examined separately. Followings are few examples of divisional patents:

Pharmaceutical Formulations: A divisional patent application might be filed to separate a pharmaceutical patent covering a new drug compound from a patent covering the specific formulation or method of drug delivery, allowing the inventions to be examined independently.

Electronics: In the field of electronics, a divisional patent could be filed to separate a patent application covering a new electronic device's hardware design from another application covering the software or firmware used in that device.

Biotechnology: A biotechnology company might file a divisional patent to separate claims related to a genetically engineered organism's structure and claims related to the methods used to produce or use that organism.

Agricultural Inventions: In agriculture, a divisional patent may be used to separate a patent application covering a new

plant variety from an application covering a specific breeding method or agricultural technique associated with that plant.

Chemical Processes: If a chemical company files a patent application that includes claims for both a novel chemical compound and the process for manufacturing that compound, they might file a divisional patent application to separate these two aspects into separate patents.

Divisional patents help ensure that each distinct invention is examined and protected on its own merits. This can be important for maintaining the integrity of a patent portfolio and preventing a delay in obtaining protection for one invention from affecting the other.

Purpose of divisional patent

A divisional patent application is a type of patent application filed to address situations where the claims in an original or parent patent application cover multiple distinct inventions. When the claims in a single patent application encompass multiple inventions that are not linked or dependent on each other, a divisional application can be filed to separate and protect each distinct invention separately. The primary purpose of filing a divisional patent application is to ensure that each invention receives its own patent protection, which can be crucial for various reasons, including:

Avoiding Unity of Invention Requirement: Many patent offices around the world, including the United States Patent and Trademark Office (USPTO)^[1] and the European Patent Office (EPO)^[2], require that a patent application relates to a single invention or a group of closely related inventions (unity of invention). When multiple distinct inventions are present in one application, the application may be rejected based on this requirement. Filing a divisional application is a way to comply with unity of invention rules.

Protecting Separate Inventions: Each invention described in the divisional application will be examined and granted a patent independently. This means that if one invention is found to be novel and non-obvious, it can still be granted a patent even if other inventions in the original application do not meet these criteria.

Flexibility in Prosecution: Divisional applications allow for more focused and flexible prosecution of individual inventions. If one invention is challenged during examination, it won't necessarily impact the others, and the applicant can choose to continue prosecuting the divisional application for the challenged invention separately.

Licensing and Commercialization: Having separate patents for distinct inventions can be valuable for licensing or commercialization purposes. It allows the patent holder to grant licenses or sell rights to each invention individually, potentially maximizing the value of the intellectual property.

Enforcement and Defense: Infringement actions and patent disputes can be more straightforward when there are separate patents for distinct inventions. It's easier to enforce or defend individual patents if they have been separately granted.

Portfolio Management: Divisional applications can help simplify and organize a patent portfolio by breaking it down into individual, manageable patents.

The High Court of Delhi has provided that divisional patent is having three purpose-

- a. To cure any defect relating to multiplicity of invention in one application,
- b. To enable filing of division application to protect the multiple inventions disclosed in one application,
- c. To allow the priority date of the parent application for the divisional application"^[3]

Legal Basis of divisional patent

Syngenta Limited v. Controller of Patents s, divisional applications are governed by Title 35 of the United States Code, particularly Section 121. In Europe, the European Patent Convention (EPC) allows for divisional applications under Article 76. In many other countries, similar provisions exist for divisional patents in their respective patent laws and regulations.

In Brazil, patents are granted by the Brazilian Patent and Trademark Office (Instituto Nacional da Propriedade Industrial or INPI)^[4]. To obtain a divisional patent in Brazil, one can apply for it when the original patent application has multiple inventions or claims that could be considered separately. A divisional patent allows applicant to pursue separate protection for specific aspects of its invention^[5]. The applicant has to assess the original patent application and identify specific aspects or claims that can be considered separately from the main invention. Then it requires preparation of a divisional patent application that includes detailed descriptions, claims, and drawings if applicable. The application must clearly identify the specific invention or claim he want to protect separately. Applicant can refer the original patent application to establish the continuity between the two applications. Required fees for filing the divisional patent application has to be paid. Fees may vary based on the nature of the application and the number of claims. The divisional patent application will be examined by the INPI. The examination process in Brazil can be lengthy, and it may take several years before your divisional patent is granted. After examination, the divisional patent application will be published for opposition purposes. Third parties may file oppositions within a specific time frame if they believe that the patent should not be granted. If the divisional patent application is found to meet the patentability criteria and no valid oppositions are filed, it will be granted. Payment of the maintenance fees to keep your patent in force is required.

Conditions for Filing Divisional Patents

When considering filing a divisional patent application, the following conditions are typically met:

- The original or parent patent application should encompass multiple inventions or a group of closely related inventions.
- Each distinct invention should be patentable on its own merits.
- The divisional application should be filed before the grant of the parent patent (varies by jurisdiction).

a. Divisional Patent in United States

Title 35 of the United States Code, Section 121 is a legal provision of the United States Code that pertains to a certain subject matter. The subsequent section delineates the conditions and prerequisites pertaining to the submission of divisional applications within the jurisdiction of the United States. The United States Patent and Trademark Office (USPTO) offers comprehensive instructions regarding divisional applications and the process of their submission.

In the United States, a divisional patent application refers to a specific sort of application that emerges from a previously submitted patent application, usually a utility patent application, in cases when the initial application asserts multiple separate inventions. The application provides the inventor with the opportunity to independently pursue the additional ideas that were disclosed in the initial application, while still maintaining the priority date of the original application. The legal foundation for the submission of divisional patent applications can be located within the United States Patent Law, specifically in Section 121 of Title 35 of the United States Code. The subsequent section presents the pertinent statutory provision.

Title 35 U.S.C. § 121: Divisional applications

"If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application."

This law essentially allows for the division of a patent application when it contains multiple independent and distinct inventions. When a divisional application is filed, it retains the filing date of the original application. This is important for establishing the priority of the invention, especially when considering potential conflicts with other patent applications.

In practice, divisional patent applications are valuable when an applicant wants to protect more than one distinct invention disclosed in a single initial application. They ensure that each distinct invention receives separate examination and consideration by the USPTO and can result in separate patents if the requirements for patentability are met.

Difference between utility and divisional patent

The terms "divisional patent" and "utility patent" are frequently employed within the realm of patent law, particularly in the United States. The United States Patent and Trademark Office (USPTO) commonly grants utility patents, which are also referred to as "patents."^[6] Patents offer legal safeguards for novel and practical methods, machinery, products, or chemical compositions. Utility patents are bestowed upon inventors for novel and advantageous innovations, rendering them the most all-encompassing form of patent safeguarding. Utility patents are typically awarded for a duration of 20 years starting from the date of application. These patents confer upon the holder the exclusive privilege to manufacture, utilise, and distribute the patented innovation within this timeframe. The patents encompass a diverse array of innovations, spanning mechanical devices, chemical compounds, software methods, and several other technologies. A divisional patent refers to a specific category of patent that originates from the submission of a divisional application.

The provisional patent application is not classified as a separate and unique type of patent, such as a utility patent. Instead, it is a particular filing approach employed within the patent application procedure. Divisional patents are commonly submitted in cases where a patent application encompasses many discrete inventions or claims that lack close interrelation. In instances of this nature, it is possible for the patent examiner to request the applicant to partition the initial application into distinct divisional applications, with each application centering on a distinct invention or set of claims. Divisional patents enable inventors to seek individual protection for each of their inventions, even if these inventions were initially included in a unified application. The duration of a divisional patent is generally congruent with that of the original parent application, which spans a period of 20 years commencing from the date of submitting the parent application. The primary distinction between a utility patent and a divisional patent lies in their respective functions. A utility patent serves as a form of legal protection for a novel and practical invention, whereas a divisional patent is a tactical approach employed to bifurcate a singular patent application into multiple applications, particularly when there exist multiple distinct inventions or claims^[7]. The divisional patent retains the same type of protection as the original parent application. Utility patents are the most common and well-known type of patent, whereas divisional patents are a procedural aspect of the patent application process.

b. Divisional Patent in Europe

The European Patent Convention (EPC) governs divisional applications within the EPO system. Specific articles and rules within the EPC outline the divisional patent process. In Europe, patents are granted and administered through the EPO and the EPC. The EPC allows for the grant of European patents, which are, in essence, a bundle of national patents, and it provides a centralized system for patent application and examination across multiple European countries. Divisional patents are a part of this system and are governed by the EPC. A divisional patent application pertains to a separate application that is filed in connection with an existing European patent application, generally referred to as the parent application. This methodology is utilised in situations where the initial submission comprises a multitude of innovations, and the European Patent Office (EPO) has made an objection of "insufficiency of unity" during the evaluation stage. This objection is based on the observation that the claims in the original application consist of multiple inventions that do not exhibit a strong interrelationship.

The key provisions related to divisional patents in the European Patent Convention can be found in Articles 76, 125, and Rule 36 EPC:

Article 76 EPC: This article deals with the filing of divisional applications. It allows an applicant to file the application at any time while the original application is still pending, provided the divisional application relates to subject matter disclosed in the earlier application. This means that divisional applications can be filed even after the parent application has been granted as a patent.

Article 125 EPC: This article grants the EPO the authority to establish the details and procedures for divisional applications through the implementing regulations. The specific rules and procedures for divisional applications are outlined in the EPC's Rules, particularly Rule 36.

Rule 36 EPC: Rule 36 of the EPC outlines the requirements and procedures for filing divisional applications, including time limits, subject matter, and priority rights.

Followings are some key points to consider with regard to divisional patents in Europe:

- A divisional application must relate to subject matter disclosed in the earlier (parent) application.
- Divisional applications may be filed at any time while the parent application is pending. There is no strict time limit for filing divisional applications, but certain deadlines must be observed for specific actions, such as responding to an EPO communication.
- Divisional applications have the same effective filing date as the parent application.
- Divisional applications can themselves give rise to further divisional applications.
- The grant of a divisional patent depends on the same criteria as any other European patent, including novelty, inventive step, and industrial applicability.

c. Divisional Patent in UK

In the United Kingdom, patents are granted by the UK Intellectual Property Office (IPO).^[8] A divisional patent application is a separate patent application that is created when a parent patent application contains multiple inventions, and the IPO determines that these inventions should be filed in separate applications. Divisional patents are filed to maintain the protection of a specific invention separate from the original parent patent application. Following is a general overview^[9] of the process for filing a divisional patent in the UK.

If the original patent application contains multiple inventions or claims, the IPO may request that the applicant should file a divisional application. He can also voluntarily file a divisional application if you believe it is necessary to protect distinct inventions separately. After that applicant has to prepare and file a new patent application, which will be the divisional application. This application should focus on a specific invention or set of claims. applicant can file the divisional application electronically through the IPO's online services^[10]. Divisional applications have their own fee structure, and the fees should be paid at the time of filing. The UK IPO website provides up-to-date information on fees for divisional applications. The divisional application will go through the examination process similar to the parent application. It will be reviewed for patentability, novelty, and inventive step. Once the divisional application is accepted, it will be published in the UK IPO's official journal.

d. Divisional Patent in India

The control of patent law in India is carried out through the implementation of the Patents Act of 1970, together with its corresponding rules and regulations. The grant of patents in India is overseen by the Indian Patent Office, which operates under the administration of the Controller General of Patents, Designs, and Trademarks.

In the context of patent applications in India, a divisional patent application refers to an independent filing that is derived from an existing or parent patent application. The parent application may encompass numerous unique inventions or claims. In the event that the examiner determines the presence of multiple innovations within the parent application, the applicant may be obligated to submit a divisional application to segregate these inventions. In order to meet the requirements for classification as a divisional application pursuant to section 16, it is of utmost importance that the parent application, from which the divisional application originates, includes a disclosure of several inventions rather than just the identical invention^[11]. "Plurality of Invention is a sine qua non"^[12]. Following are the steps and important points regarding divisional patent applications in India:

A divisional application can be filed when it is found that the parent application lacks unity of invention. In other words, the parent application includes claims that pertain to multiple distinct innovations. The divisional application serves to maintain the priority date of the initial parent application. Following this, the divisional application will be subjected to an independent evaluation process, similar to that of a typical patent application. The divisional application may exhibit a unique set of claims in contrast to the parent application. The life of a divisional patent is 20 years, starting from the date when the parent application was submitted. The submission, assessment, and maintenance of a divisional application necessitate separate fees.

The pertinent regulations pertaining to divisional applications are outlined in Section 16 of the Indian Patents Act, 1970 and Rule 13 of the Patent Rules, 2003.

Section 16 of the Indian Patent Act, 1970

"Power of Controller to make orders respecting division of application.—(1) A person who has made an application for a patent under this Act may, at any time before the grant of the patent, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

1. The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.
2. The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

Explanation. For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period."

Rule 13

1. Every specification, whether provisional or complete, shall be made in Form 2.
2. A specification in respect of a divisional application under section 16 shall contain specific reference to the number of the original application from which the divisional application is made.
3.”

**Esco Corporation v. Controller of Patents & Design
OA/66/2020 PT/DEL /**

The Intellectual Property Appellate Board (IPAB) in *Esco Corporation v. Controller of Patents & Design*, OA/66/2020 PT/DEL / clarified that while applicants possess the right to initiate divisional applications at their discretion, the authority to grant such requests lies solely with the Controller. The Controller exercises this discretion following a comprehensive evaluation to ascertain the presence of multiple inventions claimed within the original patent application, thereby ensuring the avoidance of issues related to double patenting. It further held that unity of invention should be ascertained independently of whether the invention is presented as separate claims or as alternative options within a single claim.

The corporation known as ESCO filed an appeal against the decision made by the Controller of Patents and Designs in New Delhi, which resulted in the rejection of their patent application with the identification number 8094/DELNP/2008. The applicant initially submitted a parent application including a total of 56 claims, but subsequently made amendments resulting in the retention of only 34 claims. The Controller raised an objection on the inconsistency between the claims and the parent application, which prompted the applicant to submit a divisional application. According to the ruling made by the Intellectual Property Appellate Board (IPAB), a patent application is deemed to be divided when its claims encompass multiple inventions. The IPAB referred to the relevant legislative provisions outlined in Section 7, Section 10(5), and Section 16 of the Act, MPOPP, in relation to divisional application, as well as recent orders. The term "one invention" pertains to assertions that encompass either a solitary innovation or a collection of inventions that are interconnected to constitute a unified inventive concept. The Intellectual Property Appellate Board (IPAB) recognised that all claims 1-34 of the original application might have been granted with appropriate modifications. However, the applicant chose to submit a divisional application in response to the objection raised by the Controller. The Intellectual Property Appellate Board (IPAB) additionally observed that the act of submitting the current divisional application for the original parent application does not give rise to concerns regarding double patenting.

Applicants may elect to independently file a divisional application in order to address concerns over the parent application's many inventions. The application should be submitted on the basis of "plurality of invention" and should not contain the identical set of claims as the parent application. Up until the patent is granted, the divisional application may be submitted at any moment. Nothing in the application should be exposed that isn't included in the full specification of the parent application.

When examining divisional, the applicant should be given an opportunity to amend the claims to overcome objections. The first examination report should identify distinct

inventions in cases of plurality of inventions to avoid legal complications. If multiple divisional applications are filed, subsequent examinations should be conducted to avoid double patenting.

The International Patent Application Board (IPAB) clarifies that the applicant can only file a divisional application if the claims of the parent application do not relate to a single invention. The controller may ask the applicant to amend the claims to remove overlap.

Therefore, if an application encompasses multiple inventions or a group of inventions that fall into different categories and are not inherently connected in a way that forms a single overarching inventive concept, it is considered to consist of a plurality of inventions. It is imperative that a divisional application refrains from duplicating claims present in the original parent application. Moreover, the content of the divisional patent should encompass and be relevant exclusively to the subject matter and specifications disclosed in the parent application. The priority date for divisional applications consistently corresponds to that of the parent application. Generally, divisional patent applications maintain their validity for a period of 20 years from the date of filing of the parent application.

Boehringer Ingelheim International GMBH v. The Controller of Patents & Anr ^[13],

'Use of DPP IV Inhibitors' is the name of the patent application that Boehringer Ingelheim International GMBH submitted to the Indian Patent Office in 2008. The Deputy Controller of Patents objected to the application, claiming deficiencies in inventive step and novelty in their First Examination Report from 2014. The Applicant then filed two Form-13 seeking voluntary amendments in 2015 and 2016, adding four new claims. A hearing notice was issued in July 2017, rejecting the amendments as they were beyond the scope of claims.

In September 2017, the applicant attempted to submit a divisional application, combining claims 1 through 15. In accordance with Section 15 of the Patents Act of 1970, the Controller denied the application on the grounds that the changes could not be accepted on record. The Controller denied the pending divisional application, claiming that since the revisions in the parent application were denied, the division itself could not have been approved. The court is currently debating whether the divisional applications can be submitted voluntarily, whether the use claims could have been changed to product claims, and whether the inability to obtain a patent on a parent application qualifies as a qualifying factor for divisional applications.

The court is discussing Section 59(1) of the Act, which states that an amendment to an application, specification, or related document must satisfy certain conditions. These conditions include being a disclaimer, correction, or explanation, incorporating actual facts, not causing the specification to claim or describe unrelated matters, and falling within the scope of claims as originally filed.

The related sections for divisional applications are Section 10, which outlines the description of the invention, Section 15, which discusses the Power of Controller to refuse or require amended applications, and Section 16, which covers the Power of Controller to make orders regarding the division of application.

The court examines the authority of the Controller to reject or request modified applications in specific situations. Additionally, Section 16 addresses the Controller's ability to issue orders pertaining to the division of applications. The court is currently engaged in a discussion regarding the criteria for making amendments to patent applications. This includes the consideration of disclaimers, corrections, and explanations. The court's analysis includes a discussion on the authority of the Controller to issue orders pertaining to the allocation of applications.

The applicant has the option to submit a divisional application in response to objections raised by the Controller regarding multiple inventions. A divisional application is only permissible when the claims stated in the complete specification encompass multiple inventions. Under Section 16(1) of the Act, it is possible for an applicant to submit a new application if the entire specification pertains to multiple inventions.

A divisional application's claims must follow the path outlined in the first mentioned (parent) application; claims that are deemed unpatentable by virtue of other legal requirements should not be the subject of a divisional application. Because the applicant's updated claims included real facts and remained within the bounds of the unamended specification, the appellant argued that the applicant's amended claims satisfied all the requirements of Section 59. The court noted that the protection of a medication combination consisting of a DIPP IV inhibitor of formula I or formula II alone or in combination with other active substances cannot be included in the area of protection of the initial claims. The divisional application cannot be filed based only on disclosures provided in the specification about purported innovations, if the invention is not included in the parent application's claims.

The case law makes the rules for submitting divisional applications clearer, prohibiting the use of divisional applications as a means of subterfuge and prohibiting the filing and assertion of amendments in claims as distinct divisional applications.

Syngenta Limited v. Controller of Patents and Designs ^[14]

Syngenta Limited filed a patent application in 2005 and a divisional application in 2011, which included a specific combination of the three preferred combinations. In accordance with Section 16 of the Patents Act, 1970, the Indian Patent Office (IPO) denied the divisional application on the basis that the appellant had not disclosed more than one unique invention in the parent application. After considering the facts of the case, the Court concluded that Section 16(1) of the Act permits the filing of a Divisional Application in two situations: either the applicant files it on its own initiative or in response to a Controller objection. The appellant contended that the need for multiple innovations in the initial application would only apply if a Divisional Application was filed in response to a Controller objection, and the Court accepted this position. Since the claim in the parent application included all situations in which the single continuous phase included both a hydrotrope and an oil-based adjuvant, the Court determined that the claim in the parent application related to multiple inventions. The Court directed a Division Bench of the Delhi High Court to consider two questions: first, does the requirement of multiple inventions in the parent application

for a Divisional Application to be maintainable still apply when the application is filed voluntarily and is not the result of a Controller objection?

According to the Division Bench (DB), if a divisional application contains multiple inventions from the parent application, it is maintainable. The Boehringer Ingelheim case, which determined that a divisional application would not be maintainable without a plurality of inventions in the claims, served as the foundation for this decision. A number of inventions must be disclosed in order to file a divisional application, according to the DB, but this information can be found in the provisional or full specification.

The DB also noted that the principle of "what is not claimed is disclaimed" should not be applied to divisional application submission and claim drafting, overturning the Boehringer Ingelheim case ruling. The DB also emphasized that Section 16(1) of the Act allows for the submission of a supplementary application for an invention if it is disclosed in the provisional or complete specification previously submitted with the parent application. The DB has clarified the scope of divisional applications by confirming that such an application is admissible not only based on claims but also on disclosure within the provisional or complete specification of the patent.

Future of Indian Divisional Patent Application after judicial interpretation

The Division Bench's interpretation of Section 16 and replies to the single judge's two queries in the Syngenta case will affect future patent prosecution in India. The Division Bench's opinion establishes that Section 16 does not distinguish between Divisional Applications made voluntarily by applicants and those filed in response to Controller objections. This standard treatment gives applicants freedom in filing Divisional Applications when and how. This interpretation allows applicants to begin Divisional Applications according to their strategic goals without procedural limits, simplifying patent prosecution and improving efficiency.

Focus on Specification Over Claims: The Court's emphasis on "disclosure in the provisional or complete specification" to determine multiple inventions shows a departure from claims. This interpretation provides for a broader view of inventions that are adequately disclosed in the specification but not explicitly claimed. It gives applicants more freedom to claim inventions missed during claim drafting. This technique can boost creativity and safeguard inventions better.

Clarity in Patent Filing Strategy: The judgement urges patent applicants to write provisional or complete specifications more carefully. These materials should disclose all potential inventions, so applicants can file Divisional Applications with confidence. This technique aims to reduce patent prosecution disagreements and refusals.

Over disclosure Risk: The result allows a broader interpretation of revealed inventions, although applicants may over-disclose in their specifications to gain future patents. This could lead to lengthy and complicated patent specifications, which may not benefit the patent system or the public.

Finally, the Syngenta case could improve Indian patent prosecution. It gives applicants more flexibility in submitting Divisional Applications and fosters broader

inventive recognition in patent specifications. However, applicants must carefully regulate their disclosure practises to protect patent system integrity and quality. This judgement emphasises the need of clarity and precision in patent prosecution techniques, supporting innovation and IP protection.

Conclusion

Securing independent intellectual property rights for different inventions described in a single initial patent application might be facilitated by divisional patents. A sort of patent application connected to the original or parent patent application is called a divisional patent application. For particular features or applications of an invention that were revealed in the initial application, they enable an inventor to seek independent patent protection. This can be a helpful tactic to secure more comprehensive patent protection for several components of an invention. Nevertheless, divisional patents may give rise to legal questions and concerns. A crucial legal concern for divisional patents is the necessity of "unity of invention." Accordingly, the divisional application must be related to a single invention or a collection of related innovations that together constitute a single general inventive notion. The divisional application might not be accepted as a stand-alone patent if it is not cohesive ^[15]. Divisional applications must be filed within a specific time frame relative to the parent application. The timing can vary depending on the country or patent office ^[16]. The chance to submit a divisional application may be lost if the deadline is missed. Another topic that is covered in detail above is "plurality of invention." When a divisional patent requests protection for the same invention or the same claims that are already covered by the parent patent, it creates a legal problem known as double patenting. In general, double patenting is prohibited and may result in the divisional application being denied ^[17]. A divisional patent application's claims must be backed up by the parent application's specification. During examination, any discrepancy or lack of evidence may give rise to legal problems ^[18]. Divisional patents may affect the underlying technology's licencing and enforcement. It's critical to take into account how divisional patents fit into a larger IP strategy and how they might impact the capacity to grant patent rights by licence or through enforcement. Divisional patent filing and maintenance can be expensive. If a business or innovator does not set aside enough money to pay for the filing and upkeep of divisional patents, legal problems may occur ^[19]. In this backdrop it is suggested to file a divisional patent with proper care caution and under expert guidance.

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14. [On 26 July, 2023, C.A. (Comm.Ipd-Pat) 471/2022]
15. Article 4 of the Paris Convention for the Protection of Industrial Property, which addresses the requirement for unity of invention in the context of divisional applications.
16. The relevant patent law and regulations in the specific jurisdiction where the divisional application is being filed.
17. Various patent laws and court decisions that address double patenting issues, such as the United States Patent and Trademark Office's (USPTO) guidelines on double patenting rejections.
18. Patent law and regulations regarding the relationship between claims and specifications, which can vary by jurisdiction.
19. Patent law and regulations related to maintenance fees and annuities in the relevant jurisdiction.