

The Patent Act, 1970: Eligibility, Publication and Provisional Measures

Introduction:

- For a specified amount of time, a patent gives the patentee exclusive rights to prevent anyone from using, producing or selling an invention without his/her permission.
- A patent can also be obtained for improvements to an earlier invention.
- Patent legislation's primary purpose is to encourage inventors to contribute more to their fields by granting them exclusive rights to their inventions. The patent is the privilege awarded to an inventor for the invention of any novel, useful, non-obvious process, the machine, product of manufacture, or composition of matter in modern words.
- The word "Patent" comes from the Latin word "Patere", which means "to lay open", or to make something available for public view.
- The Controller General of Patents, Designs, Trademarks, and Geographical Indications supervises Indian patent system. Each jurisdictional office is responsible for receiving patent applications in its particular territory and is authorized to handle all aspects of the Patent and its related works.
- Patent protection is provided under the Act for both process and product inventions.

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- When it comes to product patents, the grants exclusive rights to prevent unauthorized persons from creating, using, offering for sale, selling, or importing the product in India.
- In the case of process patents, the patentee acquires an exclusive right to prevent unauthorized parties from utilizing the process in India and offering for sale, selling, or importing the product generated directly from the process for those purposes. The end product of the process is likewise safeguarded.

Brief Timeline of What you will get to know about the Term “Patent”:

1. Brief Description of Patent.
2. Who is eligible to File a Patent Application?
3. Publication & Provisional Measures of Patent.
4. Request for Patent Examination & Opposition of Patent Application.
5. Term of Registered Patent.
6. Compulsory Licensing.

Any invention must pass three basic requirements to be patentable:

- ❖ To begin with, the innovation must be unique, which implies it cannot be found elsewhere.
- ❖ Second, the innovation must be unique, meaning it must be a significant improvement over the old one; a change in technique alone will not secure the creator a patent (Inventive Step).
- ❖ Third, the invention must be useful in a genuine manner, which means that it cannot be employed primarily for illicit purposes and must be useful to the world in a legitimate manner and is capable of industrial application.

An invention is considered new if it is not known to the public in any form, such as oral, written, or any other form, on the date of applying. If something is already in the public domain, it will not be considered creative.

The Bombay High Court highlighted the discrepancies between Sections 47 and 100 in the case Garware Wall Ropes Ltd. v. A. I. Chopra and Konkan Railway Corp. Ltd. In this case, the plaintiff (appellant) filed an injunction against the defendant, Garware Wall Ropes Ltd. (patentee), to stop the defendant from manufacturing and selling their patented products. A. I. Chopra, the defendant, was manufacturing these products and selling them to Konkan Railways under a contract. The defendant argued that because they were exclusively making and selling the patented products for the Konkan Railways, a Central Government department and their contract had been signed on behalf of the President of India, it was within the scope of Government usage.

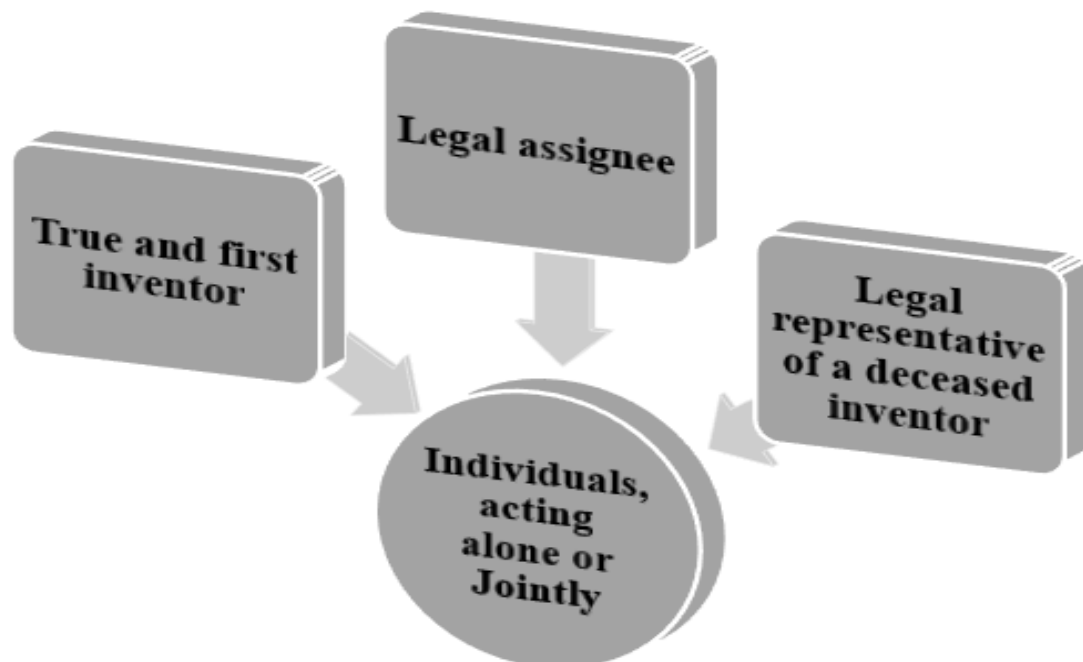
What is not considered as inventions

- An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- An invention whose, primary or intended use or commercial exploitation, would be contrary to public order or morality (which causes serious prejudice to human, animal or plant life or health or to the environment);
- Mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- Mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance;
- Mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- Mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- A method of agriculture or horticulture;
- Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- Plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;

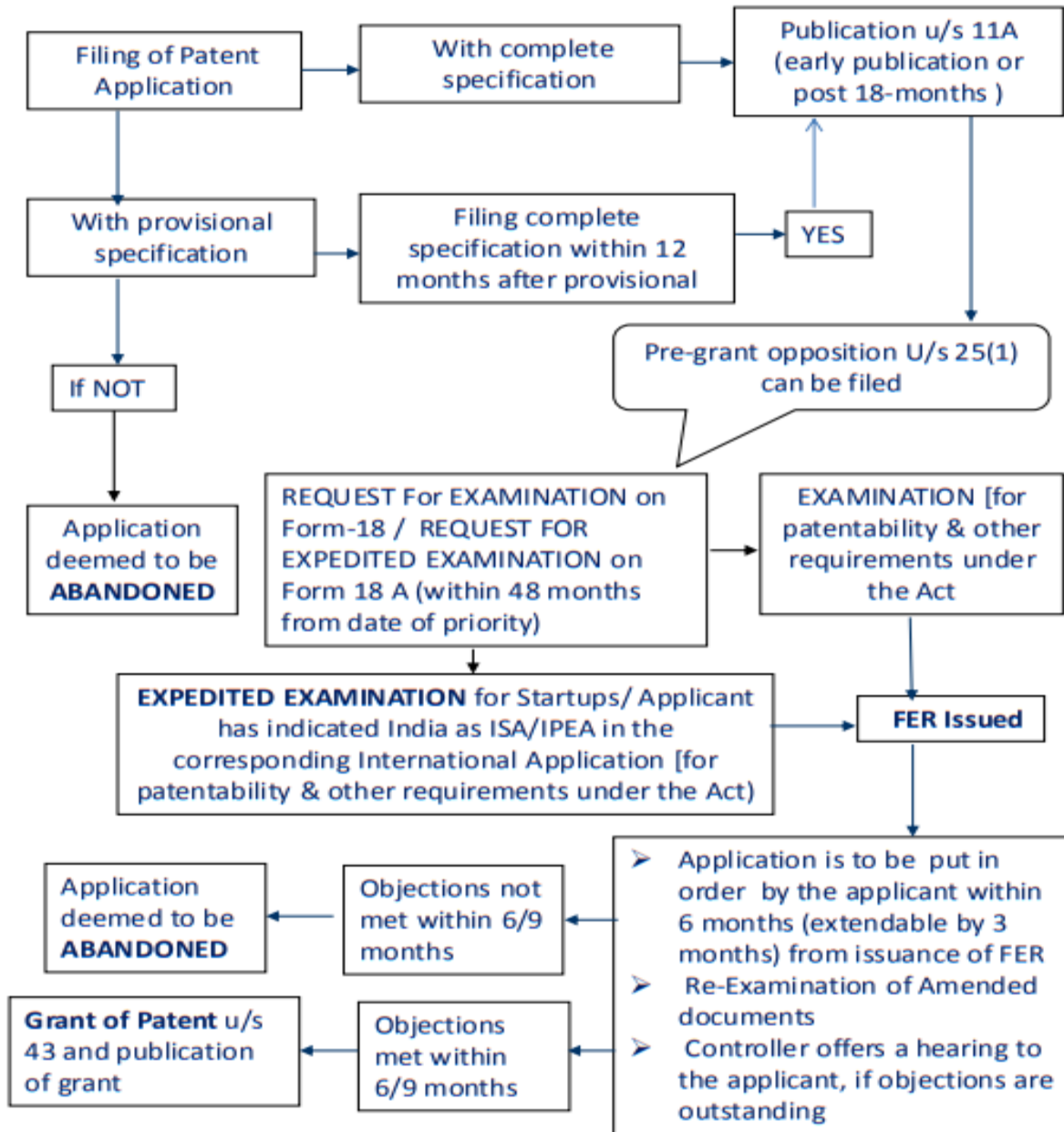
- A mathematical or business method or a computer programme per se or algorithms;
- literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- Mere scheme or rule or method of performing mental act or method of playing game;
- A presentation of information;
- A topography of integrated circuits;
- An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Who Is Eligible to File a Patent Application?

A patent application for an invention can be filed by any of the following:



Patent Flow Chart



Publication of Application:

- ◆ Every application is normally published after an 18-Month time has passed from the date of filing or priority of the application, whichever is earlier.
- ◆ The applicant might request that his application be published earlier than the customary period by filling out a form-9 by paying prescribed fee.
- ◆ Every application for a patent shall, on the expiry of the specified period be published, except in cases where the application--
 - in which secrecy direction is imposed under section 35;
 - The application has been abandoned under Section 9(1) of the Act;
 - has been withdrawn three months prior to the specified period of 18 Months.
- ◆ The early publication can result in a faster substantive review of the application and a faster grant. In circumstances where the applicant anticipates infringement, early publishing is also critical for securing provisional protection.

Provisional Measures:

- ♣ The applicant will have the same privileges and rights as if the patent for the invention had been granted on the date of publication of the application for patent and until the date of grant of patent in respect of such patent on and from the date of publication of the application for patent and until the date of grant of patent in respect of such patent.
- ♣ The applicant, on the other hand, cannot start infringement proceedings until the patent is granted on concerned invention.
- ♣ This provision benefits the petitioner in terms of claiming damages beginning on the date of the advertisement.
- ♣ Pharmaceutical and agrochemical patent applications filed under section 5(2) are exceptions to this rule and will be protected from the date of award of the patent, not from the date of publication of the invention, provided the application had been made before the 1st day of January, 2005.
- ♣ Furthermore, Indian manufacturers who made significant investments and were producing and marketing the product in respect of the application filed under section 5 (2) before January 1, 2005, will continue to manufacture the product even after the patent on said application (pharmaceuticals and agrochemicals) is granted, and no infringement proceedings will be brought against them. The manufacturer will be required to pay a fair royalty to the patent holder.

Examination Request:

- After the publication of the patent application, the applicant or any other interested person must file a request for substantive examination on the prescribed form and pay the prescribed fee within 48 months of the priority date of the application or the date of applying, whichever is earlier.
- Only after filing a request for substantive examination will the applications be examined. As a result, the applicant might postpone the application's inspection for at least 48 months from the priority date. The application will be presumed withdrawn by the applicant if the request is not filed.
- Twelve months from the date of receipt of the first examination report is the deadline for putting the application for a grant under section 21. There are no exceptions to this rule. As a result, within twelve months after the date of the first examination report, you must comply with all of the patent office's requirements and objections.
- When all of the prerequisites are met and the examiner is pleased with the applicant's arguments and amendments, the application is granted. The grant is announced in the Indian Patent Office's weekly publication, the Patent Journal. Within one year after the notification, post-grant opposition proceedings may be initiated.

Prosecution of the Opposition:

The Indian patent system allows for two types of opposition proceedings: one before the patent is granted and one after the patent is granted but before the expiry of a period of one year from the date of publication of grant of a patent.

The same reasons apply to both pre-and post-grant opposition, namely:

- wrongful obtainment of invention,
- wrongful acquisition,
- preceding publication
- prior claiming,
- prior public knowledge and use,
- obvious and clearly does not involve any inventive step,
- Complete specification does not sufficiently and clearly describe the invention or the method,
- failure to file information regarding foreign filing under Section 8 or has provided the information which in any material particular was false to his knowledge

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- Convention application has not made within 12 months from the date of the first application for protection for the invention made in a convention country,
- not revealing or incorrectly identifying the source and geographical origin of biological material in the complete specification,
- A thorough specification was expected, taking into account any oral or written knowledge accessible in any local or indigenous community in India or abroad (traditional knowledge).

Patented Term:

- ◆ Every patent awarded under the Act has a 20 (Twenty) year duration from the date of filing of application.
- ◆ In the case of international applications filed under the PCT, the patent term would be 20 (Twenty) years from the PCT's international filing date.
- ◆ To keep the patent active, a renewal fee to be payable at the expiration of the second year from the date of the patent or of any succeeding year and the same shall be remitted to the patent office before the expiration or the second or the succeeding year. Patents can be restored if they are filed within 18 months of the expiration date.

Compulsory Licensing (CL)

- Any time after the expiration of 3 (three) years from the of the grant of patent, any person interested, may make an application to the Controller for grant of compulsory license on patent on any of the following grounds, namely: -
 - that the reasonable requirements of the public with respect to the patented invention have not been satisfied;
 - that the patented invention is not available to the public at a reasonably affordable price, or
 - that the patented invention is not worked in the territory of India.

The Controller, on Suo moto basis may grant a license upon such terms as he may deem fit, on above mentioned grounds.

CL is allowed by the WTO's TRIPS (IPR) Agreement if certain conditions are met, such as "national emergencies, other severe circumstances, and anti-competitive behaviors."

Termination of Compulsory Licensing (CL)

On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence granted under section 84 may be terminated by the Controller, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur.

PTN: The holder of the compulsory license shall have the right to object to such termination.

Conclusion:

India has long recognized the value of a strong patent system for the development of industry and commerce, as seen by the changes made to bring India up to speed with the rest of the world. Following India's adoption of a product patent law, most countries are now exploring economic prospects. The number of patent applications has increased significantly.