

# Patent the Future: How to File a Patent in India

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## ABSTRACT

*Original works, inventions, or the appearance of products, artistic works, scientific advancements, and other forms of intellectual property are protected by intellectual property rights. There are four type of intellectual property right: Patent, Copyright, Trademark, Trade secrets. In this paper what is patent and how it is filled in India are discussed.*

## 1. Introduction

A patent is a legal document that protects an innovation from being copied, sold, or used without permission. When people think about intellectual property rights protection, patents are the most prevalent sort of intellectual property rights that spring to mind.[1] A patent owner has complete control over the commercialization of his or her property, including the ability to acquire and sell the patent or grant a license to the invention to any third party on mutually agreed-upon conditions.

Patent are granted for invention for a product, process which is novel and has used in industrial application. If there is one invention than only one patent is filled and granted if applicable. Patent is valid for 20 years start from date of filling patent application.[2]

### 1.1. Classification of patent:

- Patents can be classified into three different types.
- Utility: A utility patent secures the development of a useful product, process, composition of matter, or machine.
- Design: A design patent protects a practical item's design

## Intellectual Property Rights : Emerging Issues and Challenges

concept.

- Plant: A plant patent covers novel plant varieties created by cuttings or other nonsexual methods.

### 1.2. Few points for innovators

- It is recommended that you do not publish/present your invention before filling a patent application for protection of your novel research/invention.
- Always mention records of your research/invention.
- Conduct search before filling an application to judge the feasibility of grant of IP. Innovator may conduct nearest Patent Facilitation Cell under TIFAC, Department of Science and Technology or any patent lawyer.

## 2. Registration process in India

The entire patent process in India takes anywhere from 3 to 5 years and entails a series of steps that must be completed within specific time frames to obtain a patent in India. Failure to meet such deadlines may result in the rejection of your patent application. Before you begin the patent application process, you must decide whether you will seek the help of a patent professional or complete the process on your own. Given the number of deadlines and the significance of these deadlines, you should hire a patent practitioner or firm with years of experience in the patent industry. There are 7 steps to fill patent application. [3-5]

1. Check the Patentability of the invention by performing a search for similar technologies.
2. Drafting a patent application (Provisional or Complete).
3. Filing the patent application in India.
4. Publication of patent application.
5. Examination of the patent application.
6. Final decision on grant of patent.
7. Renewal.

### **2.1. Step 1 - Check the Patentability of the invention by performing a search for similar technologies**

The first stage (optional but suggested) in the patent registration procedure in India or any other country is to conduct a detailed patentability search to determine the likelihood of obtaining a patent. Ideally, the search should include both patent and non-patent references.

## **Intellectual Property Rights : Emerging Issues and Challenges**

The benefit of a search is that it gives you a solid understanding of the invention's worth and helps you decide if you have a strong possibility of obtaining a patent awarded. Furthermore, you have the option of fine-tuning your patent application based on the references (prior art) uncovered during the search to ensure that you do not end up submitting a patent for something that already exists.

As a result, while a comprehensive patentability search is generally recommended, it is entirely optional in the patenting process. Spending time and money on the search will be well worth every Rupee if you are considering going abroad with your patent application.

### **2.2. Step 2 - Drafting a patent application**

Once, you have made up your mind to go forward with the patent application process, the next step is to prepare an Indian patent application (Form 1).

Each patent application must be mandatorily accompanied by a patent specification (Form 2). Based on the state of the invention, you can either file a or a complete patent application (also known as non-provisional in some countries).

If the invention is still in development and tests are underway, it is a good idea to file a provisional application as soon as possible to avoid missing the crucial filing date. You have 12 months from the time you file the provisional application to test and finalize your innovation before filing the entire application.

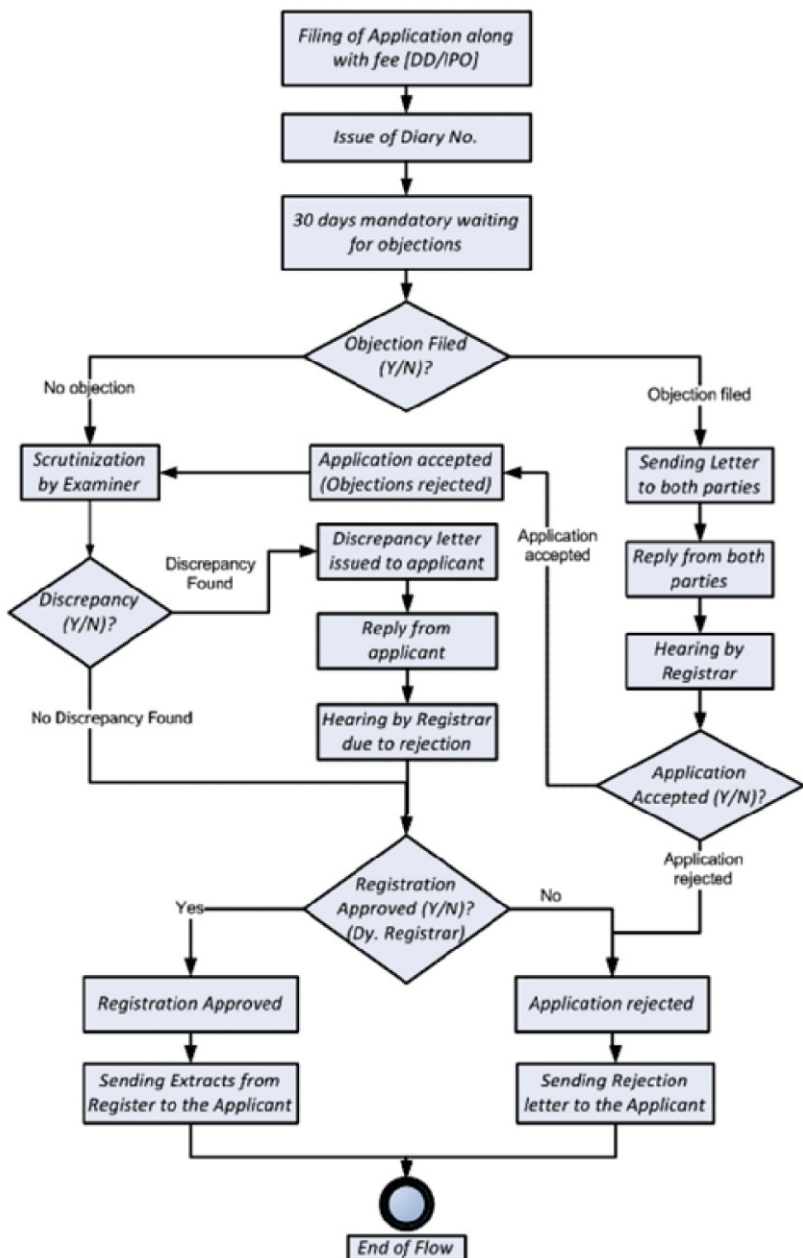


Figure 1: Patent registration flow chart [7]

Whether filing a provisional or a complete application, the patent

## **Intellectual Property Rights : Emerging Issues and Challenges**

draught provided with the application should be given considerable attention. The patent draught is your representation before the patent office, and the patent office will decide whether to award the patent based on the draught.

As a result, failing to correctly prepare a patent application may result in a patent application that is not approved or that, if granted, does not effectively help you stop competitors.

If you are serious about protecting your technology and gaining a competitive advantage, you should get experienced help from patent professionals to guarantee that your interests are adequately safeguarded.

### **2.3. Step 3 - Filing the patent application in India**

*First filing in India:* Following the drafting of the patent application, the next step is to file the patent application in India and obtain a filing date. If you file a provisional application first, you have 12 months from the provisional filing date to file the complete application.

*Foreign filing decision:* Furthermore, if you want to protect your innovation in a foreign jurisdiction, you have 12 months from the date of your first filing to do so. You can file a convention application in each of the countries where you want to protect your idea individually, depending on which countries you want to protect your innovation. You can also use the Patent Cooperation Treaty (PCT) system to reserve your claim in one of the 140 or so member nations. Both systems have advantages and disadvantages, and the decision to choose one over the other is depending on your needs and will be the subject of a separate post.

*Foreign applications entering India:* In a different scenario, if a patent application was originally filed in a foreign country and the patent applicant wishes to file a patent application in India under the Paris Convention or the PCT, the time restriction to enter India is 12 months and 31 months, respectively.

Each patent application filed with the Indian patent office must be accompanied by the following forms:

- Form 1 – Application for grant of a patent
- Form 2 – Provisional/Complete specification)
- Form 3 – Statement and undertaking regarding foreign application under section 8 (only required if a corresponding patent application is filed in another country)
- Form 5 – Declaration as to inventorship (only to be filed along with the complete application)

## **Intellectual Property Rights : Emerging Issues and Challenges**

- Form 26 – Form for authorization of a patent agent (only required if you are using a patent agent to help you file the application)
- Form 28 – To be submitted by startup or small entity (only required if you are claiming startup or small entity status)
- Priority documents – In case you are claiming priority from a foreign patent application and entering India, you may be required to provide the priority document as well.

### **2.4. Step 4 -Publication of patent application:**

Publication time: Until it is published in the official patent journal, every patent application filed with the Indian patent office is kept confidential. Patent applications are usually published after 18 months at the Indian Patent Office. This is a one-time event for which you do not need to make a request. If you want your application to be published sooner, you can submit a request for early publication (Form 9), and it will usually be published within one month of your request.

Advantage of application: The date of publication is significant since your privileges and rights begin on that date, however you will not be able to enforce them through infringement procedures until your patent is issued.

*When not published:* It is also essential to understand that a patent application may not be disclosed and kept confidential in certain circumstances:

- Under the patent law, secrecy orders have been imposed. If the invention falls into a category where its dissemination would be detrimental to the nation's interests, secrecy orders are issued.
- A complete application was not filed within 12 months of the provisional application's filing date.
- A withdrawal request was submitted. A request like this must be made at least three months before publication. In a conventional patent application process, it takes 15 months from the date of priority to receive a patent.

### **2.5. Step 5- Examination of the patent application**

Before a patent is officially awarded, every patent application that is filed for protection must be substantively evaluated. Your patent application will be considered on the merits of the invention as disclosed and claimed in the patent specification during the examination process.

Request for Examination: Unlike publication, the examination procedure is not triggered by the filing of an Indian patent application. The applicant must expressly request that their patent application be

## **Intellectual Property Rights : Emerging Issues and Challenges**

examined (Form 18). The application will be queued for inspection only after a Request for Examination (RFE) is received. As a result, the sooner you submit an RFE request, the sooner the examiner will be able to review your application.

If you want to speed up the evaluation of your patent application even more, you can file a request for accelerated examination (Form 18A). However, an expedited review is only offered to applicants that are either a startup or a small business. When during their overseas application, the applicant designated the Indian Patent Office as the International Search Authority (ISA) or International Preliminary Examining Authority (IPEA) (PCT application).

On the contrary, for strategic reasons, you may not wish to have your application reviewed early. Deferring the request could be for a variety of reasons, including prolonging the patent's pending life, waiting for funds, and so on.

*Examination process (Objections by examiner & responding to objections):* Once the Request for Examination has been submitted, it will be forwarded to an examiner with a relevant technology background for review. The examiner will study the application during the examination process to ensure that it complies with the patent legislation and guidelines. The examiner also does research to learn about related technologies to determine whether the invention meets the patentability requirements.

The examiner will issue an Examination Report to the applicant after reviewing the application and noting the grounds for objections. The First Examination Report is the first of these examination reports (FER). After receiving the FER, the patent applicant must overcome the objections to secure a patent grant. Responding to examination reports, attending for hearings, and so on are all possible parts of the process. From the day the FER is provided to the applicant, the total period required to prepare an application for the grant is 6 months (formerly 12 months).

The applicant can, however, request a three-month extension of this six-month period by making a request for an extension of time (Form 4).

### **2.6. Step 6- Final decision on grant of patent**

The patent will be issued and published in the patent gazette once the patent application has overcome all objections.

### **2.7. Step 7-Renewal**

The patent must be renewed every year by paying the renewal cost once it has been granted. In India, a patent can be renewed for a maximum of 20 years from the date of filing.

## References

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