

PATENT IN INDIA

Patent is another important IPR which provides protection to new Inventions. The object to grant patent is not only to encourage inventions but also to secure that the inventions are worked on a commercial scale to the fullest extent that is reasonably practicable without undue delay. It is not granted merely to enable patentees to enjoy a monopoly over the patented article. The basic requirement for the grant of Patent is the novelty and utility of the invention. The grant of Patents for inventions in India is governed by the Patents Act, 1970 and the Patents Rules 2003, as further amended. The patents granted under the Act are operative in the whole of India. Section 2(1)(j) of the Act defines invention as to mean a new product or process involving an inventive step and capable of Industrial application.

FAQ

1. What is a Patent?

A Patent confers on the grantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted and also of authorizing others to do so. For the purpose of obtaining a Patent, the filing an application in the prescribed format along with the specification of the Invention and abstract is a must

2. What may be patented?

Any invention satisfying the requirement of being new and useful as per the definition of the 'invention' given under Section 2 (1) (j) of the Act, such as -

- a. Art, process, method or manner of manufacture;
- b. Machine, apparatus or other article;
- c. Substance produced by manufacture, and includes any new and useful improvement of any of them and an alleged invention.

3. Inventions not patentable –

- a. An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- b. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health;
- c. The mere discovery of a scientific principle or the formulation of an abstract theory;
- d. The 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;
- e. 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;
- f. The mere arrangement or rearrangement or duplication of known devices each functioning independently of one another in a known way;
- g. A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;
- h. A method of agriculture or horticulture;
- i. Any process for the medicinal, surgical, curative, prophylactic, or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.
- j. Invention relating to Atomic Energy is absolutely not patentable.

4. Types of Patents –

Three types of Patent are granted under the provisions of the Act, namely:

- a. An ordinary Patent

- b. A patent of addition for improvement in or modification of an invention for which patent has already been applied for or granted, A patent of addition remains in force only as long as the patent for the original invention remains in force and no renewal fees are payable in respect thereof, In case the original patent is revoked, the patent of addition may be made as independent patent by the authority ordering the revocation and it will continue thereafter for the unexpired terms of the original patent subject to the payment of the prescribed renewal fees.
- c. Under Patent Cooperation Treaty (PCT) - Granted on reciprocal basis in respect of the inventions made and/ or patented outside India but in the convention country. For this a convention application is required to be made within prescribed period from the date of the first application made in a convention country.

5. Term of Patent?

20 years from the date of filing of the Application thereof.

6. Who may apply for a Patent?

- a. An application for an ordinary Patent may be made by any person claiming to be the true and first inventor of the invention or his assignee. A company or a firm cannot be named as the 'true and first inventor', however the term 'person' includes the Government.
- b. An application for a Patent of Addition may be made only by the applicant for the original Patent to which it is an addition, if the application for the main patent is pending; or by the patentee of such main patent, if it has been granted.
- c. A convention application may be made by any person who has made an application for a patent in respect of that invention in a convention country or by his assignee or his legal representative.
- d. For the persons employed in Government Service, there are certain special provisions restricting their right to file patent application under certain circumstances.

7. Inventions for which only processes of manufacture are patentable?

- a. Inventions claiming substances intended for use or capable of being used, as food or as medicine or drug, or
- b. Inventions relating to substances prepared or produced by chemical processes (including alloys; optical glass, semi-conductors and inter-metallic compounds); no patent shall be granted in respect of claims for the substances themselves, but claims for the method or processes of manufacture shall be patentable.

8. Infringement of patents?

Infringement of patents means violation of the monopoly rights to make, use, exercise, sell or distribute the articles manufactured in accordance with the patented process. Burden of proof in case of infringement lies in the defendant.

9. What is Patent Co-operation Treaty (PCT)?

The PCT is an agreement for International Cooperation in the field of patents aiming at the rationalization, cooperation and simplification of the procedure with respect to the filing, searching and examination of patent applications and dissemination of the technical information & contents therein. The process for filing of application in various countries of the world has been simplified thereby resulting in excellent cost benefits, effectiveness and simplicity. The PCT system establishes an international system which enables the filing, with a single patent Office (the “receiving Office”), of a single application (the “international application”) in one language having effect in each of the countries, who are party to the PCT, and which the applicant names (“designates”) in his application. But the PCT does not provide for the grant of International Patent and till date there is no authority which can grant an International Patent. The patent rights are still a subject matter governed by the local laws of each and every country under the PCT system.

PCT provides for the formal examination of the international application by a single patent Office which results in an report citing the relevant prior art (mainly published patent documents relating to previous inventions) which may; have to be taken into account in deciding whether the invention is patentable and the said report is made available first to the applicant and is subsequently published also.

Check List of Information & Documents required for making Patent registration application in India –

1. Name and address of the applicant;
2. Power of attorney;
3. A declaration as to inventor ship of the invention;
4. In case of convention application, certified copy of the specification or corresponding documents filed or deposited by the applicant in the Patent Office of the convention Country;

List of countries to claim priority, if any, where the application for the grant of patents is to be filed along with date and application number