

FAQ ON PATENT PROCESS IN INDIA

WHAT IS A PATENT

Patent is the exclusive right granted by Patent of Office of the country to the inventor or his assignee in exchange of the full disclosure of the invention to the Patent Office, which may be a product or a process. The Right is granted for a period of twenty years.

WHAT IS THE OBJECT OF PATENT PROTECTION

- Lawfully rewarding the inventor or owner of the invention in the form of exclusive right of making, using, offering for sale, selling or importing the patented product or process.
- Encourage scientific research and development;
- Transfer the invention into the public domain after the expiry of time limit of exclusive monopoly.

WHAT IS A PATENTABLE INVENTION

Patent is granted to the inventions satisfying following conditions:

- Must be new or novel ;
- Must non-obvious or involves one or more inventive steps;
- Must be useful and capable of industrial application;
- Must fall under patentable subject matter;

WHAT IS NOT A PATENTABLE INVENTION UNDER THE INDIAN LAW

Following inventions are non patentable subject matter as per section 3 and 4 of the Indian Patent Act:

- An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance, or 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;
- A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- The mere arrangement or rearrangement or duplication of known devices each functioning independently of one another in a know way;
- A method of agriculture or horticulture;
- Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human being 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 process for production or propagation of plants and animals;
- A mathematical or business method or a computer programme per-se or algorithms;
- A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- A mere scheme or rule or method of performing mental act or method of playing game;
- A presentation of information;
- 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
- Invention relating to atomic energy falling within sub- section(1) of section 20 of the Atomic Energy Act, 1962

WHO MAY APPLY FOR PATENT

Application for patent can be made by any of the following person either alone or jointly:

- True and first inventor
- Assignee of true and first inventor
- Legal representative of true and first inventor

WHAT ARE THE VARIOUS TYPES OF PATENT APPLICATIONS

- Ordinary application
- Convention application
- PCT International Phase
- PCT National Phase
- Patent of Addition
- Divisional application

DOCUMENTS REQUIRED FOR FILING PATENT APPLICATION IN INDIA

- Provisional/ Complete Specification(in convention and PCT application only complete application)
- Proof of right for making application
- Power of Attorney
- Declaration of Inventorship (If inventor is not the applicant)
- Statement and Undertaking under section 8, rule 12

WHAT DOCUMENTS ARE REQUIRED IF I AM FILING A PROVISIONAL APPLICATION

Provisional specification contains:

- Title
- Name, address and nationality of applicant
- Description of Invention
- Drawing (if any)
- Samples or Models(if required)

WHAT IS COMPLETE SPECIFICATION

Complete specification contains:

- Title
- Name, address and nationality of applicant

- Preamble of Invention
- Field of Invention
- Use of Invention/advantage of invention
- Prior art and problem to be solved
- Object of Invention
- Detailed description of Invention with reference to drawing if any
- Best mode of working of invention with example if any
- Claims
- Drawing if any
- Deposit of microorganisms(if any)
- Abstract

WHAT IS PRIORITY DATE

Priority date is the date on which a patent application is filed for the first time in any patent office. It is allotted by Patent office of that state.

If a provisional application is followed by complete application then priority date will be the date of filing of provisional application. In case of PCT application, priority date will be the date of foreign filing date or International filing date as the case may be.

PUBLICATION OF APPLICATION

Ordinarily a patent application will be published after the expiry of 18 months from the priority date. It can be published earlier if request is made to this effect at patent office.

From the date of publication of patent application, applicant shall have like privileges and rights as if patent for invention had been granted but these rights will only be enforceable after the grant of patent.

WITHIN HOW MANY MONTHS SHOULD I FILE NATIONAL PHASE APPLICATION

National Phase application must be filed within 31 months from the date of priority or the date of PCT Application, whichever is earlier.

WHEN SHOULD I FILE REQUEST FOR EXAMINATION

Request for examination must be made within 48 months from the date of priority or date of filing of application whichever is earlier. In case of application for which secrecy directions have been issued, request for examination must be made within 48 months from the date of priority or date of filing of application or within six months from the date of revocation of secrecy directions whichever expires later. Request for Examination is filed alongwith the official fee.

In case of PCT application processing of application only starts after expiry of 31 months from the date of priority. In this case request for early examination can be made with additional fee.

DOES LAW PERMIT FOR EARLY PUBLICATION OF PATENT APPLICATION

Yes, a patent application can be published earlier if request is made to this effect at patent office in prescribed manner with the payment of fee.

ADVANTAGE OF PATENT PUBLICATION

From the date of publication of patent application, applicant shall have like privileges and rights as if patent for invention had been granted but these rights will only be enforceable after the grant of patent.

IS PATENT APPLICATION EXAMINED AUTOMATICALLY

NO. Express request must be made for patent application to be examined either by applicant or any interested person within 48 months alongwith the payment of requisite fee.

WHAT IS THE CONSEQUENCE IF REQUEST FOR EXAMINATION IS NOT MADE

If request for examination is not made within 48 months then patent application shall be treated as withdrawn/abandoned.

WHAT IS NEEDED TO BE DONE AFTER EXAMINATION OF PATENT APPLICATION

After the examination of patent application, First Examination Report (FER) is issued by patent office to applicant. Applicant is required to comply with all the requirements of the FER within 12 months from the date of FER and the controller must accept the application with modifications or amendment to claims within the period.

WHAT WOULD HAPPEN IF REQUIREMENT OF FER IS NOT COMPLIED WITHIN 12 MONTHS

Patent application shall be deemed to be abandoned.

CAN 12 MONTHS DEADLINE BE EXTENDED

NO. There is no provision to extend 12 months time period.

WHAT WOULD HAPPEN IF RENEWAL FEE IS NOT PAID

The patent will be ceased if renewal fee is not paid within prescribed time.

CAN I REQUEST FOR RESTORATION OF PATENT AFTER ITS CEASATION

Yes. Patent which have been ceased, can be restored with express request at patent office within 18 months with the payment of prescribed fee.

TIME PERIOD FOR NATIONAL PHASE ENTRY IN INDIA

Time period for national phase entry in India is 31 months from the date of priority or filing date, whichever is earlier.

TIME LIMIT FOR WITHDRAWAL OF APPLICATION

Patent application can be withdrawn at any time before 15 months from the date of filing of application or priority date, whichever is earlier. Patent application can also be withdrawn at any time before grant of patent.

CAN A WITHDRAWN APPLICATION BE RE-FILED

An unpublished patent application withdrawn before 15 months from the date of filing or priority date can be refilled if it has not fallen in public domain otherwise. A published patent application, withdrawn before grant, cannot be refilled because of it being within the public domain.

ARE FOREIGNERS OR FOREIGN NATIONALS EQUALLY PROTECTED UNDER THE INDIAN IPR LAW

India is a signatory to the WIPO Convention and various other Treaties under which it is an obligation to grant equal protection and also adhere to all international laws/treaties/convention and provide equal protection to all persons/citizens of such member countries irrespective of their nationality. The Indian Courts are well equipped to handle all kinds of IPR cases including infringement litigation and other such action. The judges and Attorneys handling IPR cases are well experienced and are aware of international laws and conventions on Intellectual Property.

DISCLAIMER: The contents provided herein are for general information. Due care has been taken to ensure correctness of the information provided on this website. No person should act on the basis of information provided on this website as it is neither a legal advice nor an opinion. Infini Juridique shall not be responsible if any person acts on the basis of information contained on this website and for such acts, Infini Juridique shall not be responsible or liable for any loss or damage that may be suffered by such person/individual or entity. It is strongly recommended that you seek appropriate legal advice pertaining to your case from your attorney and act on the basis of the same.