

## Doing Business in India

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### IPR (Patents)

#### 1. How can one find out that an invention is already patented? (Under The Patents Act 1970)

The person concerned can perform a preliminary search on Patent Office website in the Indian Patent database of granted patent or Patent Office journal published every week. The public can conduct search free of charge on the website of Patent Office. The person concerned can also make a request for such information under section 153 of the Act. For further details please access following link.

#### 2. Where could one find a copy of the Patent Office Journal without purchasing the publication?

The Patent Office e-journal is freely available on patent office site: [www.ipindia.nic.in](http://www.ipindia.nic.in) For more information, click here.

#### 3. What are the contents of the Patent Office Journal?

The Patent office Journal contains information relating to patent applications which are published u/s 11A, post grant publication, restoration of patent, notifications, list of nonworking patents and public notices issued by the Patent Office. For more information, click here.

#### 4. Where can one find the information relating to published/ granted patent application?

The information relating to the patent application is published in the Patent Office Journal issued on every Friday. This is also available in electronic form on the website of the Patent Office, [www.ipindia.nic.in](http://www.ipindia.nic.in) For more information, click here.

## **5. What happens to a patent application once it is examined?**

After examination, the Patent Office issues an examination report to the applicant, which is generally known as First Examination Report (FER). Thereafter, the applicant is required to comply with the requirements within a period of twelve months from the date of FER. In case, the application is found to be in order for grant, the patent is granted, provided there is no pre-grant opposition filed or pending. For more information, [click here](#).

## **6. Does patent office help in finding users for patent? (Under The Patents Act 1970)**

The Patent Office has no role in the commercialization of patent. However, the information relating to patents is published in the e-journal of the Patent Office in the official website which is freely accessible to the public worldwide. This certainly helps the applicant to attract potential user or licensee. The Patent office also compiles a list of patents which have not been commercially worked in India. For further details please access following link.

## **7. What is the term of patent? (Under The Patents Act 1970)**

Term of every patent in India is 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. However, in case of applications filed under PCT, the term of 20 years begins from International filing date. For further details please access following link.

## **8. Is there any difference in the amount of fees to be paid by an individual or a legal entity for filing a patent application?**

Yes, the Patent Rules provides for different fee for individuals/Startups, SME 's and legal entity. Details can be seen in the First Schedule of the Patents Rules, 2003 as amended from time to time. For more information, [click here](#).

## **9. Does the Patent Office help to select a patent attorney or agent to make patent search or to prepare and prosecute patent application? (Under The Patents Act 1970)**

Yes, Patent Office is publishing the list of facilitators who are willing to play a role in filing patent applications for start-ups and act as a patent agent on their behalf. Their fees for this purpose have

also been notified. The list of facilitators is available in IPO website [www.ipindia.nic.in](http://www.ipindia.nic.in) and has also been uploaded in the Start-up Hub in DPIIT website. For further details please access following link.

#### **10. What are obligations of the patentee after grant of patent?**

After grant of patent, every patentee has to maintain the patent by paying renewal fee every year as prescribed in the schedule I. for first two years, there is no renewal fee. For more information, click [here](#).

#### **11. Is patent application once filed examined automatically?**

A patent application is not examined automatically after its filing. The examination is done only after receipt of the request of examination in Form 18 either from the applicant or from third party or Form 18A for expedited examination (under conditions as prescribed in the Rules). For more information, click [here](#).

#### **12. When can the request for examination can be filed for patents?**

The request for examination can be filed within a period of 48 months from the date of priority or date of filing of the application whichever is earlier. For more details kindly refer to rule 24B of the Patents Rules 2003 as amended. For more information, click [here](#).

#### **13. Is there any provision for early examination of patent application?**

There is no provision for filing a request for early examination of patent application. The applications are examined in the order in which requests for examination are filed. However, an express request for examination before expiry of 31 months can be made in respect of the applications filed under Patent Cooperation Treaty known as National Phase applications by payment of the prescribed fee. For more information, click [here](#).

#### **14. Is it possible to file international application under Patent Cooperation Treaty (PCT) in India?**

Yes, it is possible to file an international application known as PCT application in India in the Patent Offices located at Kolkata, Chennai, Mumbai, and Delhi. All these offices act as Receiving Offices (RO)

for International application. For address of these offices, website is: [www.ipIndia.nic.in](http://www.ipIndia.nic.in) For more information, click [here](#).

### **15. What can be patented?**

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. For more information, click [here](#).

### **16. Who can apply for a patent? (Under The Patents Act 1970)**

A patent application can be either filled by true and first inventor or his assignee, either alone or jointly with any other person. However, legal representative of any deceased person can also make an application for patent. For further details please access following link.

### **17. How can I apply for a patent?**

A patent application can be filed with Indian Patent Office either with provisional specification or with complete specification along with fee as prescribed in schedule I. In case the application is filed with provisional specification, then one has to file complete specification within 12 months from the date of filing of the provisional application. For more information, click [here](#).

### **18. Is there provision for filling patent application electronically by online system?**

Yes, one can file patent applications through comprehensive online filing system at <https://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin>. For more information, click [here](#).

### **19. When should an application for a patent be filed?**

An application for a patent can be filed at the earliest possible date and should not be delayed. An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention. Further, the application for patent should be filed before the publication of the invention and until then it should not be disclosed or published. For more information, click [here](#).

## 20. How a patent specification is prepared?

A patent specification can be prepared by the applicant himself or his registered and authorized agent. The patent specification generally comprises of the title of the invention indicating its technical field, prior art, draw backs in the prior art, a concise but sufficient description of the invention and its usefulness, drawings (if any) and details of best method of its working. For more information, [click here](#).

## 21. What does provisional specification of patents include?

Indian Patent Law follows first to file system. A provisional application is an application which can be filed if the invention is still under experimentation stage. Filing a provisional specification provides the advantage to the inventor since it helps in establishing a priority date of the invention. For more information, [click here](#).

## 22. Does Indian Patent given protection worldwide? (Under The Patents Act 1970)

Patent protection is territorial right and therefore it is effective only within the territory of India. However, filling an application in India enables the applicant to file a corresponding application for same invention in conventional countries, within or before expiry of twelve months from filling data in India. Therefore, separate patent should be obtained in each country where the applicant requires protection of his invention in those countries. There is no patent valid worldwide. For further details please access following link.

## 23. What is a Patent? (Under The Patents Act 1970)

Patent is a statutory right for an invention granted for a limited period of time to the patentee by the government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purpose without his consent. For further details please access following link.

## 24. Is it necessary to file a provisional application for Patents?

Generally, when an invention is not complete an application can be filed with provisional specification which is known as provisional application. This is useful in establishing a priority date

for your invention. For more information, [click here](#).

## 25. What is a Patent?

A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent. For more information, [click here](#).

## 26. What is the term of a patent in the Indian system?

The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty(PCT), the term of patent will be 20 years from the international filing date accorded under PCT. For more information, [click here](#).

## 27. Does Indian Patent give protection worldwide?

No. Patent protection is a territorial right and therefore, it is effective only within the territory of India. There is no concept of global patent. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries or under PCT, within or before expiry of twelve months from the filing date in India. Patents should be obtained in each country where the applicant requires protection of his invention. For more information, [click here](#).

## 28. Is there a possibility for early publication of patents?

Yes, the applicant can make a request for early publication in Form 9 along with the prescribed fee. For more information, [click here](#).

## 29. Does patent office help in finding users for patent?

The Patent Office has no role beyond grant of patent. Since patents are private rights the patent owner is responsible for commercializing the patent either himself or through licensee. However, the information relating to grant of patent is published in the Patent Office journal and also published on the Patent Office website which is accessible to the public worldwide. For more information, [click](#)

here.

### **30. Can any invention be patented after publication or display in the public exhibition?**

Generally, an invention which has been either published or publicly displayed cannot be patented as such publication or public display leads to lack of novelty. However, under certain circumstances, the Patents Act provides a grace period of 12 months for filing of patent application from the date of its publication in a journal or its public display in an exhibition organised by the Government or disclosure before any learned society or published by applicant. For more information, [click here](#).

### **31. What happens when applicant is not able to meet the requirement within the prescribed time for a patent?**

If the applicant does not file a reply within 6 months or does not take an extension of 3 months, the application is deemed to have been abandoned. For more information, [click here](#).

### **32. Does the Patent Office keep information of the invention secret?**

Yes. All the patent applications are kept secret upto 18 months from the date of filing or priority date whichever is earlier and thereafter they are published in the Official Journal of the Patent Office which is published every week and also available on the IPO website. For more information, [click here](#).

### **33. What are the criteria of patentability?**

An invention can become patentable subject matter must meet the following criteria: 1) It should be novel. 2) It should have inventive step or it must be non-obvious. 3) It should be capable of industrial application. 4) It should not fall within any of the provisions of sections 3 and 4 of the Patents Act 1970 For more information, [click here](#).

### **34. What are then various stages involved in the grant of patent?**

After filing the applicant for the grant of patent, a request for examination is required to be made by the applicant or by third party and, thereafter, it is taken up for examination by the Patent Office. The first examination Report is issued to the applicant to give him an opportunity to correct the

deficiencies in the application and meet the objections raised in the said report. The applicant must comply with the requirements within the prescribed time otherwise his application would be treated as deemed to have been abandoned. For more information, [click here](#).