BLOGS

Patent Application Process in India

Devanshu Agrawal · 09 May 2025

What are the steps in the patent application process? Read this post to learn more!

Introduction

The Patents Act of 1970 ("The Act") and the Patent Rules, 2003, primarily govern the patent application process in India. The Act ensures the protection of intellectual property rights by granting inventors exclusive rights over their inventions for 20 years under **s. 53 of the Patents Act**. Like the concept of 'patent,' the process of applying for it is nuanced.

This post will explore the process of applying for a patent in India.

Who Can Apply for a Patent?

As per **Section 6 of the Act**, there are three categories of persons who can apply for a patent in Indian jurisdiction:

(a) the true and first inventor of the invention sought to be patented;

(b) the person assigned to make an application by the true and first inventor, i.e., an assignee and,

(c) the legal representative of any deceased person who immediately before his death was entitled to make such an application. The process, rooted in statutory provisions, involves several stages, from conceptualizing the invention to securing and enforcing the patent.

Process to Apply for Patent in India

1. The first step in the process is determining whether the invention meets the statutory criteria for patentability under **s. 2(1)(j) of the Act**, which defines an invention as a new product or process involving an inventive step and capable of industrial application.

2. These criteria are further elaborated under **s.3**, which lists non-patentable inventions, such as frivolous or morally offensive inventions, and **s. 4**, which excludes atomic energy-related

inventions. A thorough prior art search, mandated under s.13, helps identify existing technologies to ensure the novelty of the invention.

3. Once patentability is ascertained, the inventor must document the invention comprehensively.

4. **What does the application include?**

The application requires a detailed specification under **s.10 of the Patent Act**:

- A title (a concise and descriptive title summarizing the invention)
- An abstract (a brief overview of the invention, highlighting its key features)
- Background (detailed description of the prior art and the technical problem the invention seeks to address)
- Drawings (labeled diagrams or illustrations clarifying the technical aspects of the invention, as specified under Rule 15 of the Rules)
- Claims that define the invention's scope.

S. 10(4) mandates that the claims be clear, concise, and supported by the description. Drawings under Rule 15 are often required to elucidate the technical details of the invention.

For incomplete inventions, a provisional application can be filed under **s. 9(1)**, granting the applicant 12 months to file a complete specification under **s. 9(2)**.

5. The next step involves filing the patent application with the Indian Patent Office (IPO) which operates under the Controller General of Patents, Designs, and Trademarks (CGPDTM).

6. The application is filed under **s.6**, which defines the eligibility of applicants, including true and first inventors, their assignees, or legal representatives.

7. Applications can be submitted electronically via the IPO's e-filing system, complying with procedural requirements under Rule 7, such as paying the prescribed fees based on the applicant's entity status (individual, small entity, or others). Filing can also be done physically at one of the designated patent offices in Delhi, Mumbai, Kolkata, or Chennai. Ensuring compliance with procedural requirements at this stage is critical to avoiding delays or rejections.

8. After filing, the application undergoes publication in the official journal under **s. 11A** after 18 months, making it publicly available. This publication makes the application publicly accessible, allowing third parties to review and oppose it if necessary.

9. An applicant can also request early publication under **s. 11A(2)** by paying the requisite fees. There can be pre-grant opposition/ representation made by a party to oppose the patent application. However, if not, the application enters the examination phase, triggered by a formal request under s. 11B.

10. The examination involves two stages:

(a) formal examination in which the application is reviewed for compliance with procedural requirements, such as the completeness of documentation and payment of fees; and

(b) substantive examination in which the Controller examines the application to ensure that the invention meets the criteria of s. 2(1)(j) and is free from the exclusions under s. 3 and 4.

11. Any deficiencies or objections are communicated through a First Examination Report (FER), which the applicant must address within six months, extendable by three months under Rule 24B.

12. If the examiner's concerns are resolved, the Controller grants the patent under **s. 43**, and the patent is published in the official gazette, conferring exclusive rights on the patentee under **s. 48**. These rights allow the patent holder to prevent unauthorized use, manufacturing, or selling of the invention within India. However, these rights are subject to exceptions, including compulsory licensing provisions under **s. 84**, which aim to ensure accessibility and affordability.

12. Post-grant, the patentee must ensure timely payment of renewal fees to maintain the patent in force, as outlined under s. 53 and Rule 80. Failure to pay these fees leads to the lapse of the patent.

13. Additionally, the patentee can monetize the invention through licensing agreements under **s. 69**, ensuring legal documentation of transfers or assignments. Enforcement of patent rights in India is governed by **s. 108**, which provides remedies for infringement, including injunctions, damages, and accounts of profits.

14. Infringement proceedings can only be initiated after the grant of the patent under **s.104**, with jurisdiction limited to specific district courts or higher. The patentee must also be prepared for post-grant opposition under s. 25(2) or revocation proceedings under s. 64, where third parties may challenge the validity of the patent.

International Patent Applications

The Indian patent system also provides mechanisms for international patent protection. Under s. 135, inventors can file an application claiming priority from an earlier application filed in a convention country, in accordance with the Paris Convention.

Alternatively, inventors may use the Patent Cooperation Treaty (PCT) system to file an international application, subsequently entering the Indian national phase under Rule 20. The patent application process in India is rigorous and demands careful adherence to statutory requirements.

Read More: Patent Office Procedures