# **PATENT ACT 1970**

# **DEFINITION OF PATENT UNDER SECTION 2(1)(m)**

Under section 2(1)(m) of the 1970 Patent Act of India, the term “**paten**t” can be defined as a **legal protection for any invention**. In other words, a patent can be described as a legal right granted to an individual who is regarded as an “**inventor**” under this Act for any invention.

# **MEANING OF PATENT**

A patent is that **legal right that is granted by the government** of a country to an individual or inventor with a view to excluding other people from selling, making or using the invention for a certain period of time. The essence of the patent system is to encourage product, design or ideas that are useful to the society.



* **BRIEF HISTORY OF THE INDIAN PATENT SYSTEM**

The historical development of the patent system in India dates back to as far as the **18th century**. A brief summary is given under of how the Indian patent system evolved from the 18th century to the present day Patent Amendment Act of 2005 which took effect from the 1st of January, 2005. **The following are the highlights that shows how the Patent system in Indian came into force-**

* The evolution of the patent system started in 1856 with the introduction of the Act VI to protect the interest of inventors. The Act VI of 1856 was derived from the UK’s 1852 Patent Law. At the time, inventors enjoyed certain privileges for the duration of 14 years.
* 3 years later (1959), the **Act VI of 1856** was modified to Act VX. This new Act was known as exclusive privileges.
* In 1872, the Patterns and Designs Protection Act was introduced
* In 1883, the Protection of Inventions Act was introduced
* The Protection of Invention Act was consolidated in 1888 as the Invention and Designs Act
* In 1911, the Indian Patents and Designs Act was promulgated
* On the 26th of March 1999, the Patent Amendment Act was introduced
* The 2002 Patents Amendment Act came to being
* Then in 2005, precisely on the 1st of January, the current Patents Amendment Act came into force and was subsequently implemented.

## **ADVANTAGES OF PATENTS**

**The following are the benefits of obtaining a patent for your invention:**

1. A system will stop other people from using, selling, making, importing, manufacturing or copying your invention
2. You will be protected for a specific period of time, thereby keeping your competitors at bay
3. You will be recognized in the society
4. You can make money by licensing your patent to whosoever wants to use your invention
5. Companies that want to use your invention will pay you royalty

## **DISADVANTAGES OF PATENTS**

**Despite its numerous benefits, the patent system has its own inherent drawbacks such as:**

* Making some technical information about your invention to go public during the process of application
* Applying for a patent takes a lot of time – a lot of things may have changed before your application will be granted
* Obtaining a patent will cost the inventor money whether the invention succeeds or not.
* Your patent may lapse when you fail to pay the annual fee

# **PROCEDURE FOR OBTAINING A PATENT**

In order for you to obtain a patent, you must send an application to the **Indian Patent Office (IPO)**, fill out some forms and pay a prescribed fee. **The following procedures detailed the process of applying for a patent:**

### **Step 1: Write down a detail explanation of your invention**

The detail explanation should include the following;

* Area of invention
* Description of the invention what it does
* How does it work
* Advantages of the invention
* A copy of your laboratory record should be attached

### **Step 2: Include sketches, diagrams, drawings, and also explain the workings of your invention**

The sketches and diagram should explain the working principle of your invention with visual illustrations

### **Step 3: Check whether your idea or invention is patentable**

In India, not every invention is patentable. You need to be sure that your invention is patentable. Check here to confirm your invention.

### **Step 4(a): Patentability search**

After confirming whether your invention is patentable, the next step is to check whether you meet the Indian Patent Act criteria with respect to the following;

* Novelty
* Non-obviousness
* Industrial application
* Enabling

### **Step 4 (b): Make a decision whether to go ahead or not**

The patentability search above will help you decide whether to carry on with your patent application or not. The search will save you money, time, effort, and make you decide quickly.

### **Step 5: Write your patent application**

Ensure you write a professional application. In case, you are not good at writing application letters, you may contract this stage to a professional for a small fee.

### **Step 6: Publication of your application**

After drafting your patent application, the application shall be published not later than **18 months** of first filing. However, if you cannot wait until after the 18months expires, then you will have to make an early “**patent application publication**” request with a **token**. Generally, it will take at least a month for your patent application to be published after payment. The publication will include the following;

* Application Number
* Date of Filing
* Title of Invention
* Publication Date
* International Patent Classification
* Name and address of the applicant
* Name of the inventor(s)
* Priority details like priority document number, date, country etc.
* Abstract
* Number of Claims
* Drawings (if any)

### **Step 7: Request for examination**

Your patent application will be examined once you make an examination request (RFE). Once the controller receives your request for examination, he/she will assign a patent examiner to examine your application with respect to the following criteria;

* Patentable subject matter
* Novelty
* Non-obviousness
* Inventive step
* Industrial application
* Enabling

The examiner will then compile a report and forward same to the Controller.

### **Step 8: Respond to objections**

Based on the examination report, the issue of objection may arise. Once you are not satisfied with the report, you have the right to raise an objection after analyzing the report with some patent professionals.

### **Step 9: Clearing every objection**

This is an opportunity for a patent applicant to communicate with the Controller. Use this opportunity to clear all objections. Otherwise, your patent application will not be approved. What this means is that all your effort would amount to a nullity.

### **Step 10: Grant of patent**

Once your patent application has been found to have met all patentability criteria, the application would then be granted. The patent approval would be published in a patent journal.

# **COST OF PATENT REGISTRATION IN INDIA**

Generally, there is no specific amount to the cost of obtaining a patent in India. This is because the cost depends on various factors. The best we can do is to give a range of cost. In India, there are about 2 elements that determine the cost of obtaining a patent. The two elements are;

* Fees charged by the government for renewals, forms, and requests
* Fees charged by Patent agents or professionals

The fees charged by the government for an individual applicant is different from the fees that a company would pay. Also, the patent application fee varies due to the number of the page of claims in your application. Therefore, so many factors have to be considered when talking about the cost of obtaining a patent.

In view of the above, to file a patent application, it would cost you between **Rs. 45,000 to 65,000**. We assume that you hired a patent professional for research, filing, and application writing for your invention.

# **WHERE TO FILE PATENT APPLICATION?**

The approved office to file patent application is the **Indian Patent Office (IPO).** The patent office in India has 4 branches in ***Chennai, Mumbai, Kolkata, and Delhi*.** Each of the branches covers some states. You can walk into any of the offices closer to you to file your application. For foreigners seeking to obtain a patent in India, you must provide an Indian address showing the location of your business.

# **HOW LONG DOES IT TAKES FOR APPROVAL TO BE GRANTED?**

Generally, it takes about **4 to 5 years** for a patent application to be granted. This duration is after meeting all the patentability criteria.

# **TERM OF PATENT**

Currently, in Indian, the term of a patent is **about 20 years** from patent application filing date. This term is regardless of the fact that patent application filing was done with a complete or provisional specification.

# **PATENT RENEWAL PROCESS**

For patent to be in force, one must pay renewal fee after the second year expires. To put it straight, one will be renewing his/her patent right every year until the 20 years terms elapse. One can pay the renewal fee beyond the due date.

### **PATENTABLE INVENTIONS**

**The Patent Act provides a broad definition of what can be patented**: any new or useful process, machine, manufacture, composition of matter, or any new and useful improvement thereof. Although these categories of patentable subject matter are broad, they are also exclusive, and any item that does not fall into one of them is not patentable.

##### 

##### **PERSONS ENTITLED TO APPLY FOR PATENTS**

(1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,-

(a) by any person claiming to be the true and first investor of the invention;

(b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

(c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person

### **FOLLOWING INVENTIONS ARE NOT PATENTED ACCORDING TO LAW: (NOT PATENTABLE INVENTION)**

### Invention which is contrary to natural laws

### Invention which is contrary to law, morality or public health

### Inventions which are mere discovery or a scientific principle or formulating an abstract theory

### Mere discovery of a new property or new use of an existing substance

### Substance obtained by a mere admixture resulting only in the aggregation of the properties of the components

### Arrangement, re-arrangement or duplication of known devices functioning independently

### A method or process of testing applicable during the process of manufacture

### A method of agriculture or horticulture

### Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or animals or plants to render them free of disease or to increase their economic value .

## **PURPOSE OF PATENT ACT 1970**

The main motive behind patent was to encourage scientific research, new technology and industrial progress. Patent law grants a monopoly to the inventor to use their patented product and allow the use of the same to someone with prior permission against certain consideration.

Patent confers the right to manufacture, use, offer for sale, sell or import the invention for the prescribed period to the inventor. In short, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner’s consent. It protects against infringement of the patent i.e. if someone tries to replicate the invention or invents against an existing patent the original inventor can enforce their right against such duplicate product.

* **DEFINE INVENTION AND NEW INVENTION AS PER PATENT ACT**

**Section 2(1)(j) of the Patent Act, 2005,** defines the "invention" as a new product or as process involving an inventive step and capable of industrial application.

Under the Act "New invention" is defined under section 2(1)(l) of the Patents Act."New invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art.

# **RIGHTS OF THE PATENTEE**

**The following are the rights of the patentee which can lead to infringements if violated**.

1. **Right to exploit the patent: The owner of the patent is granted the right to manufacture, use, sell and distribute the patented item in India. If the invention is a procedure of production, the patentee has the right to exercise and direct the method of the process. The agent of the patentee can enforce this right**
2. **Right to assign and license:** The invention is granted powers to deal with the patent in considerations of granting or assigning of license to others. In case there is more than one inventor, the co-owner can delegate his rights to the granting of license with the permission of the colleague in the invention and authorized by the controller.
3. **Right to Surrender the Patent:**A patentee with the permission of the controller can decide to surrender the patent. When such a case arises, the controller will advertise the patent in line with the rules governing the process in which he will notify the parties interested in the offer. The interested person will write to notify the controller of his interest and if the controller is satisfied with the positions of the patentee and the interested party, then the patent will be surrendered.
4. **Right before sealing:**Section 24 implies that a patent is sealed from the date of notification for acceptance to the date of acceptance of the notification. The right of the patentee begins after the notification for acceptance has been presented.
5. **Right to apply for the patent of addition:**this is expressed in sections 54 to 56 of the Act. A patent of addition allows for the modifications in an existing invention and an applicant for notification of acceptance is granted the rights to the patency of the same product or idea.
6. **Right to make convention application:**An Indian patentee can apply for the protection of his patent in a convention in other countries.
7. **Right in case of Infringement:**when any of the rights of the patentee is violated, then it is an infringement. When the invention of the patentee is distributed, sold, used and manufactured within India, the right of the patentee has been violated. In case of an infringement, the owner of the invention can approach a district court of competent jurisdiction to entertain the case.
8. **Right to be issued duplicate patent:**the Act states that the patentee has the right to apply to the controller to issue a duplicate patent in event of theft or damage to the original.
9. **Right to be supplied copies and certificates:** this allows the patentee to be issued with certified copies of the patents after the payment of a fee.