

PROCEDURE OF REGISTRATION OF A PATENT IN INDIA

I. Filing of Application

An application for patent can be made by completing and submitting a set of forms along with the prescribed fees with the Indian Patent Office (IPO). To file an application the following information or documentation is required:

- Application for grant of patent in the prescribed format along with the prescribed fees. The official filing fee is a fixed amount for a specification that is 30 pages long and consists of 10 claims. Additional official fee is payable for every extra page in addition to 30 and for every extra claim in addition to 10. There is however no additional attorney fee for the same. Every application must be for one invention only. On filing, the application will be accorded a date and a serial number. PCT national phase applications and non-PCT applications are accorded separate serial numbers.
- In an application for a patent made by virtue of an assignment of the right to apply for a patent for the invention, a proof of right to make the application needs to be submitted. The proof of right is either an endorsement at the end of the application for grant of patent or a separate assignment. The proof of right may be submitted within six months of the date of filing the application in India.
- Complete specification in the prescribed format. The specification must describe the best method of performing an invention.
- Statement and undertaking regarding foreign applications. Such information may be submitted, in the prescribed format, within six months of filing application in India.
- Declaration as to the inventorship of the invention in the prescribed format along with the application. This may be submitted within one month's time from the date of filing of the application if extension of time is sought in the prescribed format along with the prescribed fee.

LALL & SETHI
ADVOCATES

DEHI • KATHMANDU • COLOMBO

INDIA

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January 1, 2012

Head Office

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- Power of Authority in the prescribed format. This can be filed subsequent to the filing of application. In cases where a General Power of Attorney from the applicant has already been filed, a copy attested by the agent/attorney can be filed for subsequent filing.
- If the application pertains to any biological material obtained from India, it is required to submit permission from the National Biodiversity Authority. This may be done any time before the grant of the patent.
- The geographical origin of any biological material used in the specification needs to be indicated.
- If biological material is deposited with an International Depository Authority, it is necessary to include its details in the specification that includes the name and address of the depository institution and date and number of the deposit of the material. For international applications such reference may be made within 3 months from the date of filing.
- In case of Biotechnology inventions, relevant numbers of the sequence listing should be mentioned in the specification. Sequence listing of nucleotides and/or amino acids is filed in electronic format. Fees with respect to equivalent number of pages is payable.

II. Convention and PCT applications

- Convention applications can be filed within 12 months of filing in the Convention country. This deadline is not extendable. The date of filing in India is reckoned as filing date. Priority document may be filed along with the application or within 18 months of the date of priority or within 3 months of such notice from the Controller. If priority document is in a language other than English, certified translation has to be filed. In case of request for early publication, the priority document needs to be filed before or along with such request.
- PCT applications can be filed within 31 months of the date of priority. This deadline is not extendable. The date of filing the International Application is reckoned as the filing date in India. If the International Application has not been filed in English, a translation

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of the same has to be submitted along with the application. If amendments have been made to the originally filed PCT Application either under Chapter I or under Chapter II of the PCT, translation of such amendments also have to be submitted. Priority document needs to be submitted, if requirements of Rule 17.1 (a or b) of PCT Regulations have not been fulfilled, along with the application.

III. Publication

At the end of eighteen months from the date of priority the application gets published. It is possible to expedite publication on request in the prescribed format along with the prescribed fee. The publication will have the following particulars:

- 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)

After publication, the details of the specification and drawings filed with the application are open to public on the Indian Patent Office's website. A patentee can claim damages from the date of publication of the application. However, the patentee can institute a suit for infringement only after a patent is granted.

IV. Examination

Request for examination can be filed within 48 months of the date of priority in the prescribed format along with the prescribed fee. The Controller issues a First Examination Report (FER) that may contain objections to the grant of a patent. If the applicant fails to respond to the FER within 12

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months of the date of issuance of FER, the application is deemed to have been abandoned.

The process of examination can be expedited for a PCT application before the expiry of 31 months by applying in the prescribed format along with the prescribed fee.

V. Opposition

- Pre-grant opposition: There is provision for opposing a published application by submitting in writing to the Controller of Patents. There is no official fee for this procedure. However, it is necessary that a request for examination has already been filed for the application. It may be noted that no patent is granted before the expiry of six months before the grant.
- Post-grant opposition: Any patent can be opposed by an interested person within one year of the publication of grant of patent in a prescribed format along with prescribed fee. A successful opposition results in revocation of patent.

VI. Grant

Patent is granted after successfully complying with the examiner's objections and successfully contesting pre-grant opposition, if any.

VII. Renewal

To keep a patent in force renewal fees is payable at the expiration of second year from the date of the patent or of any succeeding year. In other words a renewal fee has to be every year up to the completion of 20 years. Renewal fee can be paid beyond the due date within a period of 6 months from the due date by filing the prescribed form along with the prescribed fee. If a patent is granted later than two years from the date of filing of the application, the fees which have become due in the meantime may be made within a period of 3 months from the date of recording the patent in the register. This time is also extendable by 6 months as described earlier.

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VIII. Term

The term of the patent is 20 years from the date of filing of the application. In case of Convention Applications it is 20 years from the date of filing in India and in case of PCT applications it is 20 years from the date of filing of the International Application under PCT.

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