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WHAT IS THE PROCESS TO OBTAIN A PATENTS?

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MAHENDRA YADAV.

CERTIFICATE

This is to verify that **Mr. MAHENDRA YADAV** student of **THAKUR RAMNARAYAN COLLEGE OF LAW** studying for **LLB Third year**, has successfully completed his project as required for the Sixth semester of three-year LLB for the Academic session 2023-2024.

Signature of professor

INTRODUCTION

Intellectual property, particularly patents, represents tangible manifestations of an individual's intellectual knowledge and innovative drive. For creators, patents serve as a means of livelihood and protection in the realm of intellectual property rights and innovative industries. They provide exclusive rights to the inventor, allowing them to prevent others from using, manufacturing, or distributing their patented technology or inventions. Registering a patent is crucial for creators to fully capitalize on their innovations. This article delves into the reasons for patent registration in India and provides a detailed step-by-step guide for the process.

- **PATENTS IN INDIAN PATENT ACT, 1970:**

The Indian Patent Act defines a patent as an exclusive monopoly right granted to the creator of an invention. To be granted a patent, an invention must meet certain criteria outlined in the Act. These include novelty, inventive step, and industrial applicability. Novelty refers to the newness of the invention, while an inventive step entails a technical advancement over existing technology. Industrial applicability means the invention must be capable of being made or used in the industry.

Section 2(m) of the patent act 1970, defines a patent as “a patent which is granted for any invention under the provisions of this Act.” Now, from the mere reading of the above-given definition, it is clear that the meaning of *patent* is not explicatory.

Therefore, in an attempt to define the same, a patent is, in simple terms, an exclusive monopoly right that is granted to the creator or sole inventor of the invention. This right is only given to the sole inventor because he is the one who has invested his hard work, sweat, and capital into the creation of the said invention, which protects the invention from other competitors in the market by preventing them from selling, manufacturing, using, and distributing the patented technology or inventions.

As per the Indian Patent Act of 1970, a patent is only granted when a certain technology or product fulfils the following criteria, which are also discussed in depth for clear comprehension.

⇒ **New or novel**

For the grant of a patent in the Indian jurisdiction, any invention created has to be mandatorily novel in nature. The Act uses the term “novel invention” in relation to the definition. Therefore, it is necessary to first define the term ‘invention’ which is given under **Section 2(1)(j)** of the Indian Patent Act and elucidates that anything can be termed an invention when it is created through an inventive step, i.e., introducing technical advances to the existing technology and giving out a product or process that is capable of industrial use.

Now, on to the novel aspect of this invention. **Section 2(1)(l)** of the Act provides that an invention is said to be new or novel when it is not anticipated in the document or used in India or the world before the filing of the patent application with the specified subject matter of the invention in the Indian patent office. What must be seen to consider the invention as new is that it did not exist in the state of the art because it enables every individual in the country to access the prior existing technology or invention. The same aspect was observed in *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* (1978), that an invention must have a novelty of such a nature that it was not known in society before the date of the patent for the grant of a patent.

⇒ **Inventive step**

An invention shall only be patented when it involves an ‘inventive step’. The mentioned term, in plain language, means an advancement to an invention’s technicality, which is new and different from the existing technology in the particular field. Another criterion by which an invention is considered to involve an inventive step is when it is non-obvious to a person skilled in the field.

Let us understand this through an example. Say a person named ‘A’ works in the field of electric motor vehicles, and he has invented a system where every time a person hits the brake, the energy goes directly to the vehicle’s battery cabinet, thereby enabling the charging of the battery while in use. The said invention is patentable since it involves an inventive step of such a nature that is new from the existing technology and is non-obvious to a person skilled in the related field as no one could ever think of this system.

Need to register a patent with the Indian patent office

The following are the essential reasons for having the invention patented in India:

⇒ **Protection and possession**

In this technology-ridden era where all businesses are driven by high-tech technology, it is essential for the innovators to protect their knowledge since it is the only tangible asset that is responsible for all their operations because of their created technology. So, it is essential for the running of business operations to protect this very technology from other players in the market. Apart from this, the concept of the original inventor also comes into play since what a man invents must be his asset because he is the only one who has invested his sweat, energy, time, and, most importantly, knowledge and skills in the creation of the said invention. Unfortunately, in today's time, every other corporation, whether it's small or giant, is indulged in the race to achieve the best that can be achieved by new inventions and ideas. Therefore, in order to protect and possess what is yours, it is essential to patent the invention.

⇒ **Monetization opportunity**

Once the inventor of a certain invention acquires its patent, he is open to monetizing it at his will and can thus amass a handsome amount of wealth. The patent can no doubt be a source of wealth if handled with due diligence and financial knowledge. The creator can generate wealth through the marketing of the new product, licensing it to any other corporation that provides a great monetary value, and even selling the patent for a massive amount.

⇒ **Encourage innovation**

In the patent registration procedure, it is provided that when a patent application is accepted and completes all its necessary requirements, the said invention is published in the patent journal to inform the world that this invention is being patented, and for the same reason, any opposition is invited. Upon the publication of the invention, the created technology is directly put out into the world with every minute detail along with its functions, and other innovators come to know of this invention. Therefore, through this, the inventor also encourages the spirit of innovation in society. Since ideas can be taken or can emerge in the minds of other innovators with the knowledge of existing inventions on the market, other aspiring inventors or creators can surely

indulge in the practice of learning how to make this certain invention more advanced or how to make another invention complementary to this one that would benefit society on a greater level.

OFFICE JURISDICTIONS OF FILING PATENT APPLICATIONS:

A patent application can be filed in Kolkata, Delhi, Mumbai, and Chennai either online or at the respective jurisdictional patent offices for the grant of patents.

The above-mentioned office covers the following jurisdictions:

Patent office	State jurisdiction
Mumbai patent office	States of Maharashtra, Gujarat, Madhya Pradesh, Goa, Chhattisgarh and union territories of Daman & Diu & Dadra & Nagar Haveli
Chennai patent office	States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, and the Union Territories of Pondicherry and Lakshadweep.
New Delhi patent office	States of Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal and the Union Territories of Chandigarh
Kolkata patent office	The rest of India.

⇒ **Online patent registration process in India**

The following is the detailed step-by-step procedure to file a patent in India through the online system:

Step 1:

Account log in

Anyone who wants to file for a patent for his invention first has to visit the site, i.e., [E-Filing of Patent Applications](#), and then has to create an account there. Through e-signing accounts can be created there.

Patent search (discretionary/optional)

One of the foremost and most important steps is to search the technology or invention that one has created to see whether whatever he has created does exist in the state of the art since, for the grant of a patent, one of the requirements is the novelty of the product, i.e., its newness. A patent search can benefit the inventor by allowing him to look for inventions already existing in the public domain; through this, he could find out what inventions are patented in India or around the world, whereby he can then make a decision regarding his further operations with the invention and whether to follow the patent procedure or not. Through this, he escapes from spending unnecessary fees on the patent application and other relative work. Moreover, the patent office's grant patents to those inventions that are new in the state of the art to such an extent that they did not exist in the world prior to the patent filing.

Patent application

[Section 7](#) of the Indian Patent Act of 1970, requires the true creator of the invention to file the application for only one invention in the patent office in the prescribed form. In accordance with the same, he is to draft a patent application in [Form 1](#). Patent application drafting refers to the drafting of an invention in legal and technical language, wherein the patent agent mentions all about the invention with each and every specification. The motive for the drafting of the patent application is to state how the present invention is to be used by people skilled in the art, advocate how the invention created is different from others, and explain how it can be of industrial application. The most crucial step in patent filing is the drafting of patent applications.

The individual has to fill out Form 1 provided above to complete the first step of e-filing the patent.

In this step, only [Form 2](#) is also to be attached, which is called the patent specification form. In this, the applicant needs to specify the provisional or complete specification of the invention, stating the description, claims, and abstract for the same. The description of the invention has

already been discussed above, so let's discuss the terms "claims" and "abstract act" of the invention.

Claims

Patent claims are the most important part of the patent specification since they act as a show book for the patent applicant. Through patent claims, the patentee states the subject matter of the patent, wherein he or she specifies the elements and boundaries of the said invention. After stating the subject matter of the same, the patentee then notifies the patent office of what he sought to protect in the invention through a patent so that no other individual can sell, manufacture, or distribute it without prior permission.

Statement and undertaking

[Section 8](#) of the Patent Act and [Rule 12](#) of the Patent Rules govern the provisions regarding the statements and undertakings of a patent, where [Section 8\(1\)\(a\)](#) elucidates that the patentee must provide a statement regarding any other application that he has filed outside India, providing the particulars about the same or substantially similar invention. It is necessary for the patentee to notify the patent office about the same within six months of the patent application's filing date.

Section 8(1)(b) further makes it mandatory for the patentee to produce an undertaking to the patent controller to give a timely update regarding the filing of any application outside India.

Power of attorney

the patentee is required to give a power of attorney in case a patent agent is assigned. The power of attorney plays a crucial role in the grant of the patent since the patentee acts through this legal document and only gives authority to his agent to act on his behalf.

Declaration of inventorship

[Section 28](#) specifies that the person filing the patent application must be the true inventor or joint inventor of the said invention, and for the same, he is to file a declaration of inventorship in [Form 5](#), wherein the true inventor makes a declaration that he is the original inventor or joint inventor of the invention.

Fees payment

The last step is to pay the payment fees through the payment gateway.

Step 2

The patent rules talk about the publication of a patent application in an official journal which provides that after the expiration of 18 months, the patent application will be made available to the public. After the submission of all the above-stated requisite documents and forms, and after an expiration of 18 months from the date of filing of the application, the application is officially published in the journal, where the title, abstract, application no., and names of the application and inventor are mentioned.

Step 3

[Rule 55](#) provides that after the publication of the patent application in the journal, the said application is open for any opposition by any person within 3 months from the date of publication or before the grant of a patent, along with the statement, evidence, and request for hearing of the opposition. Further, if there is opposition, the patent controller will forward the opposition to the applicant. Upon receiving the opposition from the controller, the applicant will file the statement along with supporting evidence in reply. And after having all the relevant evidence along with the statement, there will be a hearing if it is so requested. If not, then the controller will finally either reject the opposition or accept it and not grant the patent.

Step 4

Request for examination

In order to protect the invention, as per [Rule 24B](#), the applicant has to file a request for examination of the patent within 48 months from the date of filing the application. [Section 11B](#) of the Act states that no application for the grant of a patent will be examined unless the applicant requests the same. Where the application is not filed within the above-stated time period, the application is treated as withdrawn by the applicant. Therefore, it is absolutely mandatory for the applicant to apply for examination of the patent if he truly wants his invention protected.

First examination report

After the request for examination of the patent application, the examiner at the patent office will thereby examine the invention in order to ascertain whether the created invention fulfils the essentials for a patent, which are novelty, inventiveness, and industrial application.

After examining the invention, the office will issue a first examination report (FER) and send it along with specifications to the applicant, highlighting the objections and suggestions contained therein. Usually, an examiner sends the report within one month.

Step 5

After receiving the first examination report (FER), the applicant gets an opportunity to submit a response to the objections raised to overcome all of them. And if the controller finds the responses submitted by the applicant satisfactory in light of the raised objections, the patent will be granted to the applicant.

OFFLINE PATENT REGISTRATION PROCESS IN INDIA

For the purpose of offline patent filings, there are jurisdictional patent offices in the Kolkata, Delhi, Mumbai, and Chennai regions.

The applicant can protect his invention through patent protection by filing the patent application in offline mode by visiting the office and submitting the requisite documents and doing the necessary formalities. An applicant has to submit the following documents at the counter of the jurisdictional patent office:

Step 1

Covering indicating the list of documents

At the outset of the patent application in offline mode, the applicant first needs to attach a cover indicating the list of documents. This list of documents is simply an index that primarily showcases the required documents that are attached to the application.

Application for grant of patent

The second step is to attach the application for the grant of a patent to Form 1 in duplicate.

Specification

The application for grant of a patent is followed by the specification of the invention, either provisional or complete. The specification refers to the description of the invention that is sought to be protected through the grant of a patent. It is important to note that the provisional specification is only optional, while the complete specification is mandatory.

The specification also comprises a description, claims, drawings, and an abstract. which have already been discussed above under the “online patent filing” heading.

Statement and undertaking

It is mandatory for the applicant to provide a statement and undertaking for the grant of the patent for his invention.

Power of attorney

A power of attorney is to be attached with the application in Form 26 in case a patent agent is assigned.

Declaration of inventorship

In [Form 5](#) in duplicate, the applicant has to provide a declaration of inventorship in relation to the invention.

Statutory fees

At last, the applicant has to pay the required statutory fee for the processing of his application for further procedures.

Statutory fees are:

Particulars	Natural person	Small entity	Large entity
For patent filing application	Rs. 1,750	Rs. 4,400	Rs. 8,800
For each sheet of specification	Rs. 180	440	880
For each claim	Rs. 350	Rs. 880	Rs. 1,760

After the above-mentioned first step, the application would then go through the same steps that were followed in the online patent filing process, i.e., the publication of the application, opposition to the application, including post-grant opposition, followed by a request for the examination, and receiving the first examination report where, after satisfying the controller through the filed statements, the applicant acquires the patent for his created invention.

Who can apply for a patent in India?

Section 6 of the Indian Patent Act, 1970, provides that any person claiming to be the true and first applicant, or being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application, or being the legal representative of any deceased person who, immediately before his death, was entitled to make such an application, can apply for a patent in India.

What is the need to file a patent in India?

The paramount purpose of filing a patent is to protect the creation or invention from authoritative sale and manufacture in the market because it is the true creator who has invested his time, money, skill, and knowledge in its creation.

Through whom can a person file a patent application?

Although Section 6 of the Act provides that any person can file a patent application in India, in most cases, the inventor does not have the required knowledge about the filing process and system. Therefore, many organisations and companies in the innovative world hire patent agents and attorneys to assist the inventor in filing a patent efficiently.

What is the term of patent protection in India?

According to [Section 53](#) of the Act, the term of patent protection in India is 20 years from the date of filing of the application for the patent.

CASE LAW:

Novartis AG v. Union of India & Others (Supreme Court of India, 1 April 2013)

The facts:

Gleevec is based on the original drug “**Imatinib**”. In 1992, Novartis filed a patent application for “imatinib”, which also covered pharmaceutically acceptable salt forms of “imatinib”. This patent was granted by the US Patent and Trademark Office (USPTO). Novartis received US Food and Drug Administration (FDA) approval for one salt form of imatinib, i.e. “imatinib mesylate”, in 2001. As opposed to the original (“free base”) substance imatinib, the salt form (i.e. mesylate) is soluble in the human body. In 1997, Novartis filed a US patent application for a specific variation of imatinib mesylate, i.e. its “beta crystalline form”, for which the USPTO eventually granted a patent. The beta crystalline form enables oral administration of imatinib mesylate. In

1998, Novartis also applied for product patent protection for the beta crystalline form of imatinib mesylate in India. The Indian Patent Office rejected this application in 2006, based inter alia on the failure by Novartis to show “significantly enhanced efficacy” of the beta crystalline form over its original salt, i.e. imatinib mesylate, as required under Section 3(d) of the Indian Patents Act. This consideration was confirmed by the Indian Intellectual Property Appellate Board (IPAB) on 26 June 2009. Novartis appealed to the Supreme Court. In order to meet the statutory requirement of enhanced efficacy under Section 3(d), Novartis in 2005 conducted studies to show inter alia a 30% increase in bioavailability of beta crystalline imatinib mesylate over the original substance imatinib.

Summary:

On 1 April 2013, the Supreme Court of India confirmed the rejection by the Indian Patent Office of a patent application filed by Swiss drug maker Novartis on the anti-cancer medicament “Gleevec”. The Supreme Court (hereinafter “the Court”) considered that Gleevec did not qualify as a patentable “invention” under Section 3 (d) of the Indian Patents Act.

CONCLUSION

Patent protection in Indian law aims to safeguard inventions and innovations, providing creators with exclusive rights and economic opportunities. Registering patents is essential for creators to assert their ownership and capitalize on their inventions. It also fosters innovation by sharing knowledge and inspiring further advancements.