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## **ABOUT US**

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# RESEARCH AND COMPARE THE PATENT LAWS OF INDIA TO EUROPEAN COUNTRIES

*AUTHORED BY - ANUSHKA SINGH CHOUHAN*

## Abstract

Patent now a days plays a very essential role in security of drug product and process innovated by the patentee. A patent is a monopoly right granted to an inventor, giving the inventor the right for a limited period of time to prevent others from making, using or selling his invention without due permission from the inventor. The patent system plays an important role in stimulating the economy and advancing the quality of life. It serves as an incentive for innovation by giving inventors an exclusive right to their inventions for a limited period of time.

It also increases and hastens the publication of useful knowledge by requiring inventors to disclose their invention to the public. Patents are particularly important in the pharmaceutical and biotechnology industries because they provide a mechanism by which the extremely high product development costs may be recouped. The legal requirements for obtaining a patent are discussed. The process of examining an application for a patent is also briefly described. The objective of this work includes comparison of patents between India, US and Europe. As per the data received by an official site, the number of applications filled and granted in US is more, compared to India and European countries. Both these laws are very distinct.

There are many similarities but differences also exist. The procedures of obtaining a patent are almost the same in all major patent systems; the difference comes with respect to patentability of inventions. US patent laws allow the grant of patent to anyone who invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof. On the other hand, the Indian patent and EU Patent statute quite elaborately describes what inventions are not patentable under different sections of the Patent Act.

**Keywords:** Patent, Utility, Description, Patent process, India, United State, European Countries.

## Introduction

□ An innovation's patent is an exclusive right given by the government to the inventor to prevent others from using, producing, and selling the invention for a set amount of time. Also, a patent is allowed for enhancements to their prior invention. By giving inventors exclusive rights over their innovations, the major goal of patent law is to motivate them to make greater contributions to their fields. Modern terminology typically refers to the patent as the right given to an inventor for his invention of any novel, practical, non-obvious procedure, and machine, manufactured good or material composition. The Latin word "**patere**," which means "**to lay open**" or "to make available for public examination," is where the word "patent" first appeared.<sup>1</sup> Three fundamental tests exist for any invention to be patentable.

□ Firstly, the invention must be novel, meaning thereby that the invention must not be in existence.

□ Secondly, the invention must be non-obvious, i.e. the invention must be a significant improvement to the previous one; mere change in technology will not give the right of the patent to the inventor.

□ Thirdly, the invention must be useful in a bonafide manner, meaning thereby that the invention must not be solely used in any illegal work and is useful to the world in a bonafide manner.

□ A patent is an exclusive right awarded for an invention, which is typically a product or technique that provides a new way of doing something or a new technical solution to a problem. The objective of enacting patent law is to encourage innovators to make greater contributions to their respective fields by granting them exclusive rights to their ideas. In modern parlance, a patent is a privilege awarded to an inventor for his invention of any new, useful, non-obvious procedure, machine, the manufactured object, or combination of substances.

□ Over the years, patent laws have become a common practice all over the world as it protects the authenticity and exclusivity of the product. In this article, the author aims to state and compare the patent laws of some major countries and unions with India.

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<sup>1</sup> [Patents \(wipo.int\)](http://wipo.int)

- Only novel and practical inventions are eligible for patent protection under Indian law.
- The machine, item, or substance that a manufacturer produces, or the method used to make an item, must be related to the invention. A patent may also be obtained for an invention of a product or a manufacturing process. When it comes to drugs, medicines, and some kinds of chemicals, the substance itself does not receive a patent, even if it is novel, but the manufacturing technique is.

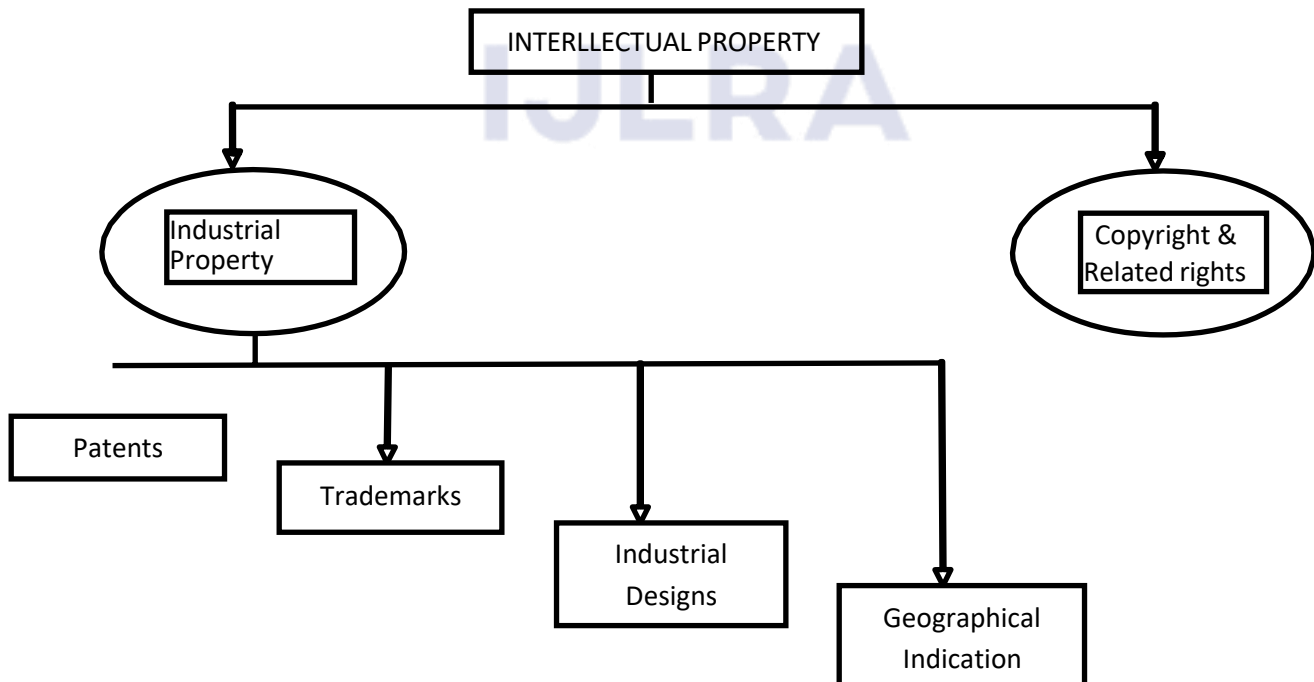
The first inventor, or the person who has acquired title from him, must make the application for a patent, and the right to do so must be assignable.

## Intellectual Property broadly divided into two categories-

### Patentable invention

According to the Indian Patent Act, a patentable invention is defined as a new product or process involving an inventive step and capable of industrial application.

- Invention must be ‘new’
- Invention must involve an ‘inventive step’
- Invention must be having ‘industrial application’



## Invention not patentable<sup>2</sup>

The main categories, which do not qualify for patentability under the act, are:

- An invention, whose use could be contrary to the public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment. For example, a new type of gambling machine.<sup>3</sup>
- Inventions relating to atomic energy. This is so because the central government has the sole responsibility for the development of atomic energy and for obvious reasons will not like its programmes to be hampered by patent claims.
- An invention which is frivolous or which claims anything obviously contrary to well established natural laws. For example, an invention that claims a perpetual motion machine will not be patentable because the claim would be contrary to well-established laws of nature.
- The mere discovery of a scientific principle or the formulation of an abstract theory. For example, a discovery merely unveils a hidden thing; it does not involve an act that makes it useful; it is therefore not an invention and hence not patentable. Similar reasoning applies to the formulation of an abstract theory.
- Discovery of any living thing or non-living substances or objects occurring in nature

**Register of patents:** The patent office and its branch offices shall maintain the register of patents. The patent number, the names and addresses of the patentee, notifications of assignment, renewals, information regarding patent ownership, etc. are all included in the register of patents.

**Renewal fee:** Every year, renewal costs are due. The first renewal fee is due before the patent's second anniversary and is payable for the third year of the patent's life. Renewal costs may be accrued and paid immediately after the patent is sealed or within three months of its entry in the register of patents if it hasn't been issued within that time frame. The date of renewal fee payment is calculated from the date of the patent. Grace periods of six months are offered with an extension cost. If the Original patent is cancelled and the Patent of Addition is

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<sup>2</sup> Indian Patents Act, 1970.

<sup>3</sup> Indian Patents Act, 1970.

converted into an independent Patent, then Renewal Fees are due for the Remainder of the Term of the Independent Patent. No renewal fees are payable during the pendency of the application for a patent; renewal fees that become overdue during pendency are payable upon sealing within three months of recorded in the patent register.<sup>4</sup>

**Duration:** A patent lasts for 20 years from the date of filing the complete specification.

**Restoration:** A patent restoration request must be submitted within a year of the expiration date if it was caused by the failure to pay renewal costs. The one-year window for requesting restoration starts on the date of recorded if a late annuity is not paid within the extension period.

**Infringement:** Infringement includes removing key components of the patented invention, using claimed characteristics, replicating patented materials, establishing mechanical equivalents, and taking a portion of the invention while the patent is still in effect. Usage by or for the government is not considered an infringement. Such use shall be subject to payment on conditions to be agreed upon prior to or following use. Use for research purposes, use on foreign boats, and accidental or temporary use do not constitute infringement.<sup>5</sup>

**Appeal:** Appeal lies in the high Court. Appeal must be lodged within three months from the decision of the controller.

**Right to surrender:** By sending notification to the controller in the appropriate manner, the patentee has the right to renounce the patent at any moment. The controller will publicly announce the offer of surrender before he or she accepts it, giving interested parties a chance to reject it

**Opposition:** Notice of opposition must be filed within four months of notification in the Gazette. Extension of one month is available, but must be applied for before expiry of initial four-month period

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<sup>4</sup> *Comparision of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

<sup>5</sup> *Comparision of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

## Limitations on Patentee's Rights<sup>6</sup>:

- ✓ There are certain limitations on the rights of the patentee.
- ✓ Any patented product or process or a product made using patented process may be used by or on behalf of the government for its own use only.
- ✓ An invention is said to be used for the purposes of government if it is made, used, exercised or vendible for the purposes of the central government, state government or a government undertaking;
- ✓ A patented article or article made by use of patented process may be used by any person for experiment, research or for imparting instructions to pupils and
- ✓ In case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the government for its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the government.

## Transfer of Patent<sup>7</sup>

1. Whenever a patentee transfers a patent that is registered in his name after giving up ownership of it, the transferee is required to apply to the department for the removal of the transferor's name from the patent register and subsequent registration of his own name.<sup>8</sup>
2. If someone submits an application in accordance with subsection (1), the department must notify the patentee, whose name is listed in the register, and instruct him to file a complaint with the department within 15 days if he objects to the transfer of his patent in files complaints in accordance with this deadline and it becomes essential to ascertain which of the two parties has title to the patent. If no objection is lodged within this window of time, the transfer will take place as specified in the application.
3. The person submitting an application for a patent transfer in accordance with the provisions of this section shall submit the required payment to the department along with the application.

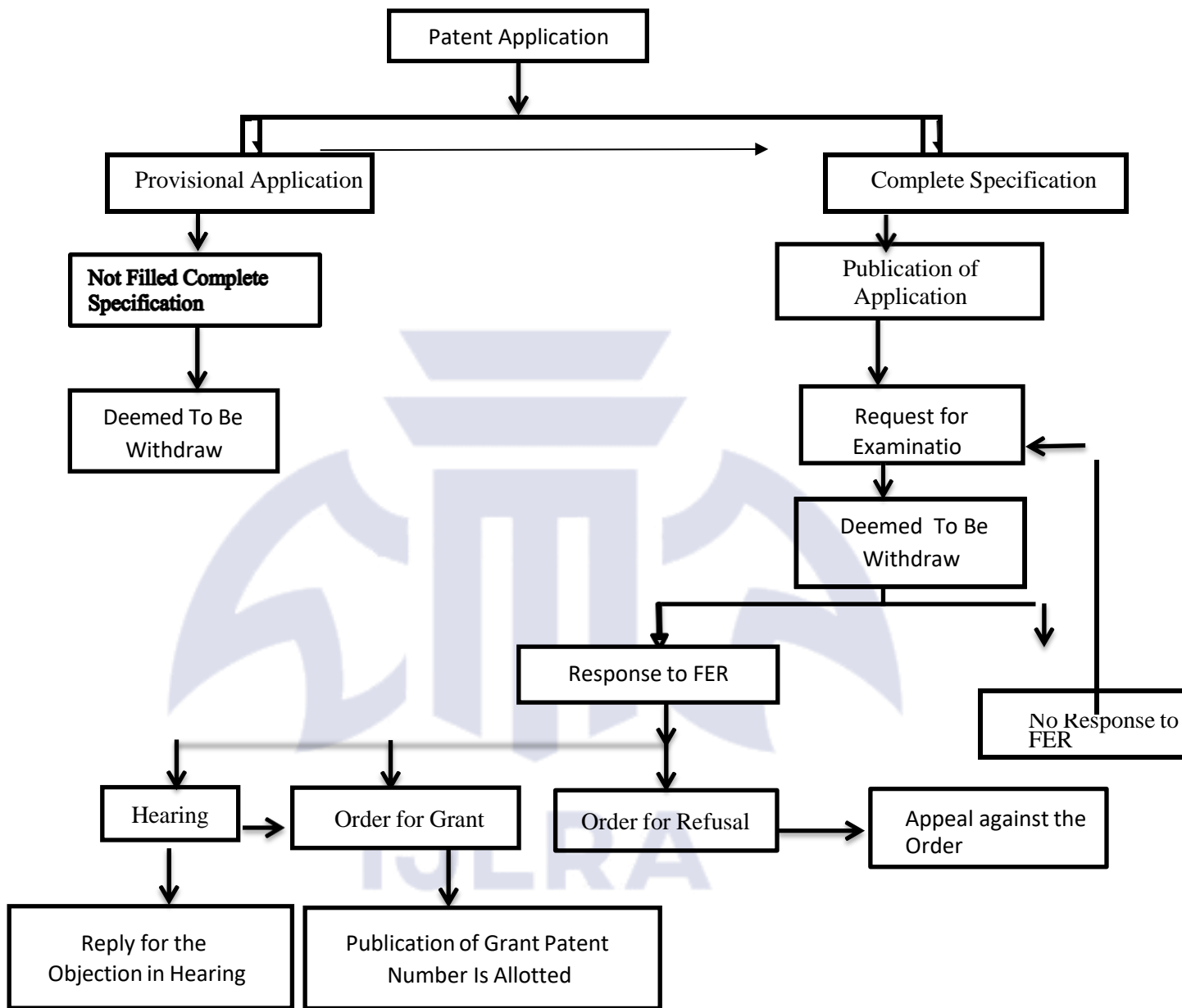
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<sup>6</sup> Indian Patent Act, 1970

<sup>7</sup> [Comparative analysis of patent law of India with other countries \(ijclp.com\)](http://www.ijclp.com)

<sup>8</sup> Indian Patent Act, 1970

## Procedure for obtaining patent in India<sup>9</sup>



<sup>9</sup> Indian Patent Act, 1970

# PATENT SYSTEM IN EUROPEAN COUNTRIES

## Patentable invention

Only fresh, innovative, and industrially useful inventions are eligible for patent protection under the rules of the European Patent Convention. An invention satisfies these requirements if it can be made or used industrially, was not previously known to the public in any form prior to the priority date or the date of filing, and was not obvious to a person of ordinary ability in the art.

## Invention not patentable

Discoveries, mathematical methods, computer programs and business methods as such are not regarded as inventions. Surgical and therapeutic procedures along with diagnostic methods practiced on the human or animal body are excluded from patentability. New plant or animal varieties are completely excluded from patentability. The European patent convention does not, of course, recognize inventions whose commercial exploitation would be contrary to "order public" or ethical principles, such as means of cloning human life or the use of human embryos for commercial and industrial purposes.<sup>10</sup>

The grant procedure

1. **Filing a European patent application:** Applications for European patents may be submitted at the central industrial property office of any contracting state, as well as at the European Patent Offices in Munich, The Hague, and Berlin.
2. **The language of a patent application:** Any language may be used to submit a European patent application, but only one of the three official languages—English, French, or German—will be used for processing. It must therefore be translated into English, Français, or German within two months if it was submitted in any other language.<sup>11</sup>

<sup>10</sup> *Comparison of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

<sup>11</sup> [Non-Obviousness: Comparison Between India, Europe And The US - Patent - Worldwide \(mondaq.com\)](http://mondaq.com)

3. **Components of a European patent application:** European patent applications consist of four or five parts:
  - i. Request for grant: Requests should be made using the official "Request for grant" form, which is obtainable free of charge, accompanied by explanatory notes, from the European patent office and the patent offices of the contracting states.
  - ii. Description of the invention: The description must describe the invention clearly and completely enough for a person skilled in the art to be able to carry it out.
  - iii. Claims: The claims must define the subject-matter for which patent protection is sought in terms of its technical features. They must be clear and concise and be supported by the description.<sup>12</sup>
  - iv. Drawings: The application may also contain drawings. These form a useful addition to the description when they illustrate the features of the invention.
  - v. Abstract: The abstract is purely for technical information and is not used to assess the patentability of the invention.<sup>13</sup>
4. **Filing and formalities examination:** The examination on filing is the first phase in the European patent award process. This entails determining if all required data and supporting materials have been submitted so that the application can receive a filing date. An indication that a European patent is sought, the applicant's information, and a description of or a reference to a previously submitted application is all necessary. In the event that claims are made, they must be made within two months. This is followed by an evaluation of the application's "formalities," which includes the format and substance of the patent application, the translation, the designation of the inventor, the appointment of a professional representative, and the payment of any required costs.<sup>14</sup>
5. **Search:** A European search report is created concurrently with the formalities review, outlining all the office's documents that are deemed pertinent for determining uniqueness and innovative step. In addition to the description and any drawings, the search report is based on the patent claims.

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<sup>12</sup> [Non-Obviousness: Comparison Between India, Europe And The US - Patent - Worldwide \(mondaq.com\)](#)

<sup>13</sup> [Non-Obviousness: Comparison Between India, Europe And The US - Patent - Worldwide \(mondaq.com\)](#)

<sup>14</sup> *Comparison of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

The search report is submitted to the applicant as soon as it has been created, along with a copy of any mentioned papers and a preliminary assessment of whether the claimed invention and the application comply with the provisions of the European Patent Convention.<sup>15</sup>

- 1. Publication of the application:** Normal publication of the application and search report occurs 18 months following the filing date or priority date. After hearing about the release of the search report, applicants have six months to determine whether or not to proceed with their application by seeking a substantive examination. Alternatively, unless she has waived this invitation, an applicant who has already sought examination will be invited to confirm whether the application should move forward. A European patent application grants the innovation in the states specified in the application as published provisional protection as of the date of publication. Yet, it might be required by national law to submit a translation of the claims to the relevant patent office and have this translation made public.<sup>16</sup>
- 2. Substantive examination:** The European Patent Office investigates whether the European Patent Application and the invention to which it relates meet the requirements of the European Patent Convention, and in particular whether the invention is patentable, after the request for examination has been made, in light of the search report and taking the applicant's response into account. Nevertheless, the award won't be given out until the claims have been translated into the other two official languages and the necessary fees have been paid.
- 3. The grant of a patent:** A "bundle" of distinct country patents make up the issued European patent. The patent must be recognized in numerous contracting states for it to keep its deterrent impact and be upheld against infringers. This means that, when necessary, the patent holder must submit to the national patent office a translation of the specification, or at the very least, the claims, into the official language of that state. Moreover, fees could have a due date. National law governs these matters.<sup>17</sup>

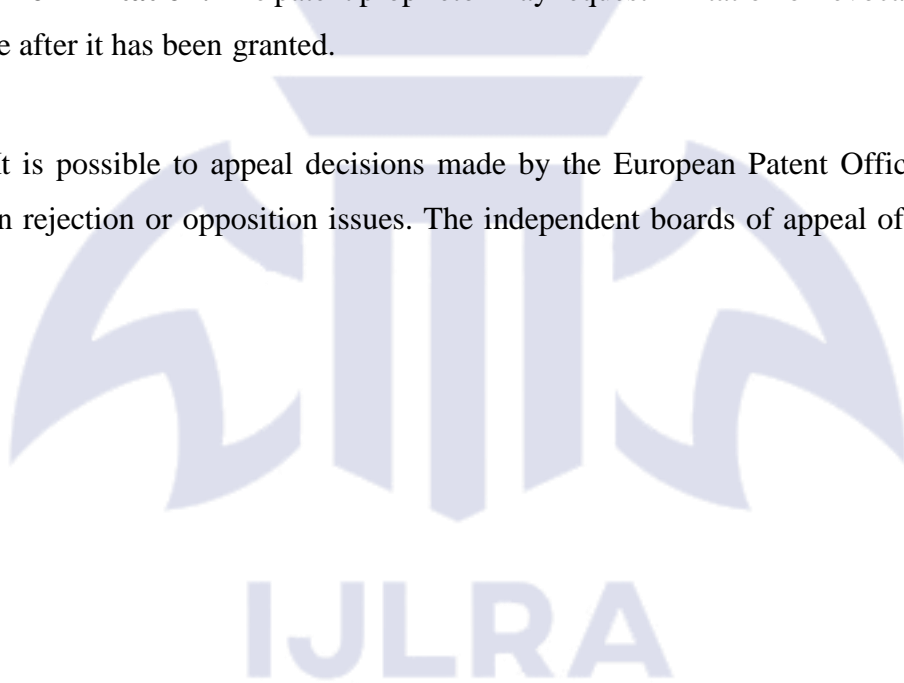
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<sup>15</sup> *Comparision of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

<sup>16</sup> *Comparision of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

<sup>17</sup> *Comparision of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

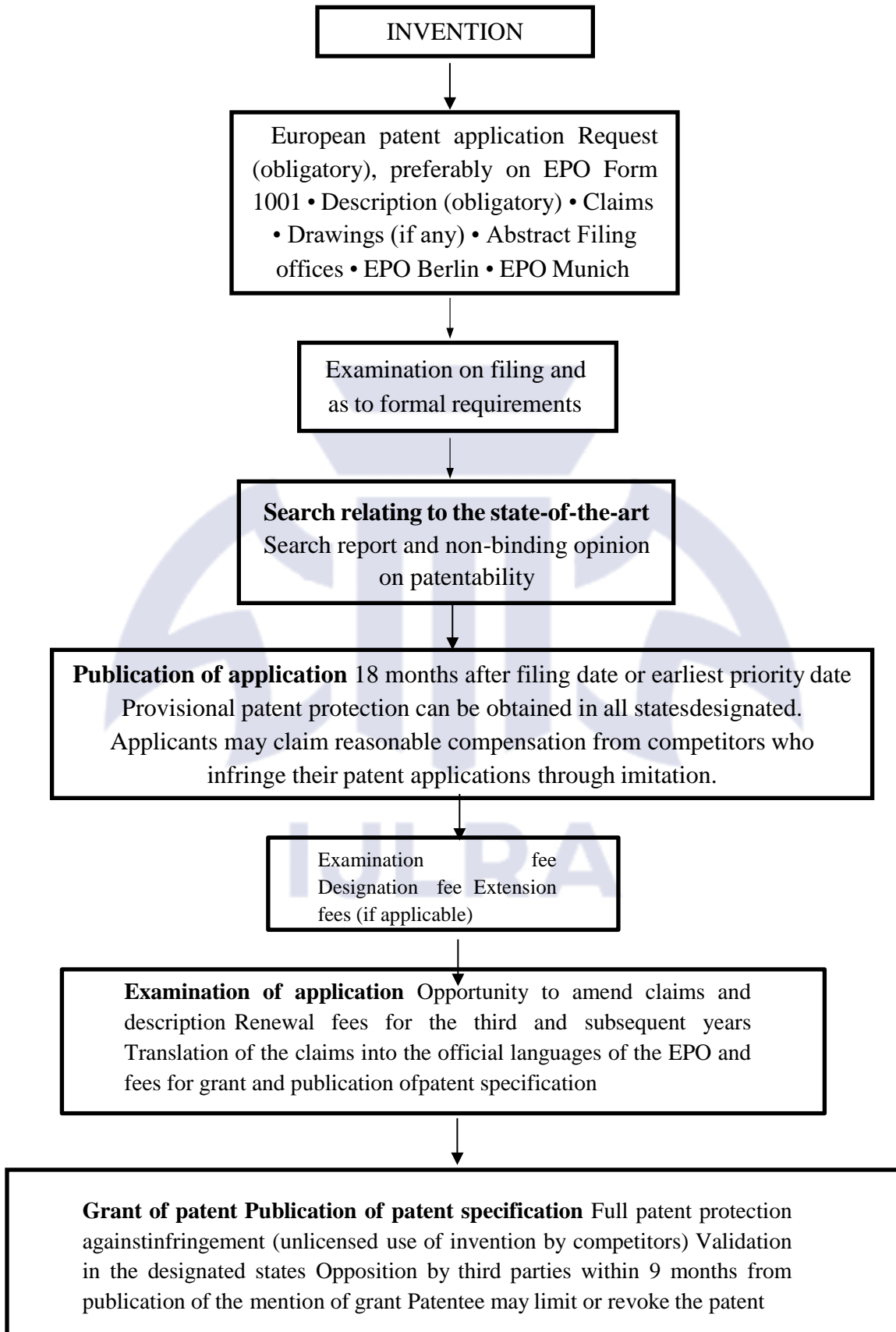
4. **Opposition:** After the European patent has been granted, it may be opposed by third parties  
– Who will usually be the applicant’s competitors – if they believe that it should not have been granted (for example, because the invention lacks novelty or does not involve an inventive step). Notice of opposition must be filed within nine months of grant being mentioned in the European patent bulletin.<sup>18</sup> The examination of oppositions is handled by the European patent office’s opposition divisions, which are usually also made up of three examiners. After publication of an application, third parties may present observations on the patentability of the invention to which the application or patent relates, as long as proceedings are pending before the EPO.
  
5. **Revocation or limitation:** The patent proprietor may request limitation or revocation of the patent at any time after it has been granted.
  
6. **Appeal:** It is possible to appeal decisions made by the European Patent Office on subjects like application rejection or opposition issues. The independent boards of appeal of the EPO decide appeals.<sup>19</sup>



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<sup>19</sup> *Comparision of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

### Flow chart for EU patenting process



<b>First to file versus first to invent<sup>20</sup></b>	
<b>INDIA</b>	<b>EU</b>
India first to file systems, thus it does not matter who invents first; it's the first filer who gets the rights over the invention.	When two people apply for a patent on the same invention, the first person to have filed his application will get the patent (assuming the invention is patentable, of course). This holds even if the second person did in fact come up with the invention first. The only thing that counts is the filing date
<b>Grace period</b>	
The application for patent should be filed before the publication of the invention and till then it should not be disclosed or published.  However, under certain conditions, there is a grace period of 12 months for filing an application even after publication.	The grace period is usually 6 or 12 months
<b>Publication of patent applications</b>	
When the application is found to be suitable for acceptance it is published in the gazette of India. It is deemed laid open to the public on the date of publication in the gazette of India.	All patent applications are published 18 months after their filing date, unless they have been withdrawn. If the novelty search has been completed by that time, the search report is included with the publication.
<b>Rights conferred by a granted patent</b>	

<sup>20</sup> Comparison of Patenting System in India, Us and European Countries by Nikitha K. Heble, N. Vishal Gupta

<p>A patent granted before the commencement of this Act, shall confer on the patentee the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute the invention in India.</p>	<p>The European Patent Convention is a treaty signed by twentyseven European countries, namely Austria, Belgium, Bulgaria, Switzerland, Cyprus, the Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, the Netherlands, Portugal, Romania, Slovenia, Sweden, Turkey and the United Kingdom. Patents under the EPC are granted by the European Patent Office (EPO) in Munich.</p>
<p><b>Opposition after grant<sup>21</sup></b></p>	
<p>At any time within four months from the date of advertisement of the acceptance of a complete specification, any person interested may give notice to the Controller of opposition to the grant of the patent</p>	<p>Within nine months after the grant of a European patent, anyone can file an opposition with the EPO, stating why this patent should not have been granted (of course with arguments and evidence). The patent holder and the opponent can then debate with each other. Finally, the EPO</p>

<sup>21</sup> *Comparison of Patenting System in India, Us and European Countries* by Nikitha K. Heble, N. Vishal Gupta

	will take a decision based on facts and arguments presented by both sides.
<b>Inventive step</b>	
Invention must be „new“ Invention must involve an „inventive step“ Invention must be having „industrial application“	The two most important requirements in European patent law are that, to be patentable, an invention must be novel and Involve an inventive step.
<b>Patent offices</b>	
Mumbai, Chennai, New Delhi and Kolkata	Munich, The Hague, Berlin, Vienna and Brussels
<b>Requirements for patents<sup>22</sup></b>	
<ul style="list-style-type: none"> <li>• Title of the Invention.</li> <li>• Technical field of invention.</li> <li>• Prior art with shortcomings</li> <li>• Problem with the existing art.</li> <li>• Proposed technical solution.</li> <li>• Brief description of the accompanying drawings, if any.</li> <li>• Detailed description of the invention</li> <li>• Examples</li> <li>• Claims.</li> <li>• Appropriate fees</li> </ul>	<ul style="list-style-type: none"> <li>• European patent application consists of a request for the grant of a European patent,</li> <li>• a description of the invention,</li> <li>• one or more claims,</li> <li>• Any drawings referred to in the description or claims, and an abstract.</li> </ul>
<b>Restoration</b>	
Within one year from the date on which the Patent ceased to have effect, make an application for the restoration of the patent.	NA

<sup>22</sup> Comparison of Patenting System in India, Us and European Countries by Nikitha K. Heble, N. Vishal Gupta

**Conclusion:** Given the aforementioned analysis, it can be inferred that while the US and EU do not have a similar patenting process to India, other countries do. There was, however, some distinction. In this study, it was discovered that, with a few exceptions, the patenting process is essentially the same across all nations, including the Patent Office.

