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Life Cycle of a Patent in India

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ABSTRACT

In India, any invention relating to a product or a process that is new, involves an inventive step (Invention of own), and is capable of industrial application can be patented in India. In order to be granted a patent in India, the invention must be novel and have an inventive step. The Patent law of India specifies conditions for inventors to get protection for their creations. In general, any invention relating to a product or process which is new and has industrial application can be patented in India. However, if the invention is merely an improvement of an existing product or process, then it cannot be patented in India under Indian Patents Act 1970.

The lifespan of a Patent in India is not more than 20 years. After patent expiration, the invention becomes freely available to everyone.

Any person who is a citizen of India or other countries can apply for a patent in India. However, if the applicant is not an Indian citizen, then he/she must have an establishment in India and should be registered as a patentee under the Indian Patents Act 1970. If an application for a Patent is filed by an individual, then it must be signed by him/her personally.

Therefore, this paper compromises the Application process for Patents and the Stages that are faced by it in its lifecycle. Along with it, this contains the types of Patents that can be filed in India and their respective regulations. This paper also describes the procedure for filing a patent application in India and explains how to make an invention or creation protected by Indian law.

I. INTRODUCTION

The first thing to remember is one cannot patent an idea. Any invention relating to a product or a process that is new, involves inventive step (Invention of own) and capable of industrial application can be patented in India. However, it must not fall into the category of inventions that are non-patentable as provided under Section 3 and 4 of the (Indian) Patents Act, 1970. Section 3 describes clearly that if the product is not an invention, it cannot be patented. In India, a patent application can be filed, either alone or jointly, by true and first inventor or his assignee.

¹ Author is a student in India.

II. TYPES OF PATENTS

There are Four different types of Patents:

- 1) **Utility Patent:** This is issued for the invention of a new and useful process, machine, manufacture, or composition of matter, or a new and useful improvement.
- 2) **Provisional Patent:** It is an application which is not of an actual patent. A provisional patent application is a cheap and a fast way to gain protection on an invention for 12 months and allows the Inventor to test and perfect a concept prior to filing a full patent. However, Provisional Patent to be granted requires submission of Full Patent Application within 12 months of Provisional Patent Application, else it is marked as withdrawn.
- 3) **Design Patent:** This type of patent offer protection for a design on a useful item. The shape of a bottle or a design of a shoe, for example, can be protected by a design patent.
- 4) **Plant Patent:** A plant patent protects new kinds of plants produced by cutting or other means. Plant patents generally do not cover genetically modified organisms and focus more on conventional horticulture.

III. REGISTERING A PATENT

Section 6 of the Patent Act provides the person who is entitled to make an application for a Patent:

- True & first Owner of the Invention,
- Assignee of the Invention,
- Legal Representative of deceased person.

The registration or the application filing process of a Patent is bit lengthy and time taking.

There are different types of Application process according to the criteria. They are as follows:

- Convention Application
- International Application
- Divisional Application
- Application for Patent of Addition
- Ordinary Application

Registering a Patent involves series of steps:

- 1) Filing an Application under Section 3 of the Patent Act, along with the Provisional

/Complete Specification.

- a) Application form is filled under section 7 of the act.
 - b) It says that only one application can be filled for one invention and every application should be accompanied with Provisional and Complete Specification.
- 2) After the submission of the Complete Specification, a Request for Examination is made.
 - 3) A First Examination Report (FER) is prepared on the basis of the Specifications provided.
 - 4) The Application is Published to the General Public for Pre Grant-Opposition [Section 25(1)].
 - 5) If there is no issue or no Opposition, the Patent is Granted.
 - 6) Post Grant Opposition [Section 25(2)] is done for the period of 12 months after the grant of Patent so that if the Patent is harming the rights of any person, they can approach in between the time of Post Grant Oppositions

Oppositions are done to reduce the future Case proceedings against the Patent. They are mentioned under Section 25 of the Act.

Registering a Patent through Online Mode:

- 1) Registration with basic details on <https://ipindiaonline.gov.in/>
- 2) Login with User ID and Password or by Digital Signature
- 3) Selection of Entry from qualifying category
- 4) Entering the other details regarding the Patent
- 5) Saving the Draft
- 6) Digitally signing the Drafted Entry
- 7) Selection of Payment Gateway.
- 8) Making the Payment.
- 9) Acknowledgement Slip
- 10) Generation of CBR along with permanent numbers.

IV. POST GRANT LIFE OF PATENT

After the grant of Patent, The Owner or Patentee gets exclusive rights for his product. He can use the Patent anywhere and it can be easily commercialized. It gives the patentee right to stop others from copying, manufacturing, selling or importing the Invention without the permission

of the Patentee.

V. SURRENDER OR REVOCATION OF PATENT

- Section 63 talks about Surrender of Patent. A Patentee can anytime surrender his patent by giving a prior notice to the controller of the office mentioning the Offer to Surrender the Patent.
- The Controller then publishes the offer and notifies other persons who have previously shown interest in the Patent and have registered for it.
- Any person who is interested can give notice to the controller of opposition to surrender and then the controller notifies the Patentee.
- Section 64 of the Act talks about the Revocation of the Patents. It means cancellation of the rights granted to a person by the grant of a patent.
- Patents can be revoked on certain grounds that are listed in the Section.
- It also includes situation where Central Government have the power to acquire a patent from an applicant or patentee if it deems it necessary for Public Purpose, Under Section 102.

VI. PATENTS OF ADDITION (POA)

If a Patentee wants to make a modification or improvement to an invention which he has registered, he can approach the controller under Section 54 of the Patents Act. The Controller can grant the patent for improvement/modification as a Patent of Addition.

Patent of Addition is not granted before the patentee grant for main invention.

Section 55 describes the Term of Patents of Addition. The term is same as main invention, i.e., 20 Years. There is no renewal fees paid for POA.

VII. TERM OF A PATENT

A granted Patent will expire after 20 Years of the filing date, unless it expires earlier due to a failure to pay fees or a declaration invalidity by the court. After the Patent expires, the invention is again available to get patented by all. Design Patents, unlike Utility Patents, have a term of 14 years from the date of issue. If the Patent office takes longer than three years to examine the report and grant a patent, the term of patent maybe adjusted accordingly.

Patentee can extend a patent's lifespan every year by paying the renewal fees as per the prevailing rules and regulations. But its ultimate validity is up to 20 years only. After that, the

patent will expire and its validity cannot be extended. Once the Patent is expired, Patent protection also expires. The Invention will be made available to the public and anyone can use the invention commercially as well.
