

Procedure for filing Patent Registration under the Patent Act, 1970

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What do we understand from the word Patent?

Patent is a form which is exclusively provided by the government to inventors allowing them to create, use, purchase and sell their inventions and scientific creation for the purpose of disclosing it to the public at large.

The Patent Act, 1970

The Patent Bill, 1970 was successfully passed and received the consent of the President on 19 September 1970 and it became the Patent Act 1970 and it was amended in 1974, 1985, 1999, 2002 and 2005.

The term "Patent" has been described under Section 2(1) (m) of the Patent Act 1970. This section restricts the use of patent only to inventors. Patent is a certain condition granted to the inventor for inventing a new product or a process. The patent law enacted in across the whole world to promote innovation and invention. Using this exclusive privilege, the inventor can create, package, sell, deal and exercise his right in the invention. This enables him to sue anybody who carries out similar activities in the invention, during the exclusive period. In exchange for the privilege, the inventor has to disclose his innovation to the government and government discloses it to the public at large. The exclusive privilege and the public disclosure is a 'quid-pro-quo' which means something in return and it is an arrangement between the inventor and the government. The patentee can use his patent right in his own manner, including selling the patent right, licensing it, assigning it and using to create products and services around it. The Indian Patent Office (IPO) publishes The Manual of Patent Practice and Procedure (MPPP) which describes the practices followed by the IPO while dealing with patent applications. An inventor or his representative or his attorney, who aims to seek patent

protection for their invention, has to prepare the documents and submit the document to the patent office according to the guidelines which are mentioned in the MPPP (Manual of Patent Practice and Procedure). They have to follow all the rules and regulations mentioned therein, without this the application would be rejected and while submitting the application they should remember the jurisdictional restrictions imposed by the patent office.

Requirements for the Grant of a Patent

The inventor has to follow all the rules and regulation mentioned in the Patent Act, 1970 to get a patent right. They are as follows-

- The invention can be a product or process.
- Novelty-Such product or process has to be new.
- Non- Obviousness- The invention must involve an inventive step.
- Industrial Utility- The invention should be capable of industrial application.

Who can apply for a patent?

There are three circumstances mentioned under Section 6 of the Patent Act which describes about who can file a patent. The mentioned circumstances are;

- Any person who is claiming to be the true and first inventor of the invention.
- Any person who is the assignee of the true and first inventor.
- The legal representative of the deceased person who was entitled to make such an application.

Procedure for filing a patent registration under the Patent Act 1970

If the inventor decides to get a patent registration in India, then he needs to follow a specific rules and regulations and procedure specified in the Patent Act, 1970 and the Patent Rules 2003 needs to be followed. Indian Patent Office with its different branch located in Delhi, Mumbai, Chennai and Kolkata holds the authority for providing patent registration in India. The appropriate jurisdiction is normally based on the Applicant's domicile or place of business or the place from where the invention actually originated or created. The inventor can also file for a patent registration through online procedures.

There are few steps need to be followed to get a patent registration. They are;

- 🚦 Check the patentability of an invention

- ✚ Drafting Patent Application
- ✚ Filing the patent application in India
- ✚ Publication of Patent Application
- ✚ Examination of Patent Application
- ✚ Grant of Patent
- ✚ Renewal

- ✚ Check the Patentability of an invention- The first step for the registration is the patentability of an invention. To get a registration, it must meet all the criteria as per Indian Patent Act:

Novelty

Inventiveness

Industrial application

Enabling

- ✚ Drafting Patent Application- According to the state of the invention, one person can either file a provisional or complete application. If the invention is in the development mode, it is suggested to go for a provisional application to block all important filing dates. A complete specification shall be filed within twelve months from the date of filing of the patent application, and if the complete specification is not filed, the application

shall be deemed to be rejected. The patent specification must involve Title of the patent invention, Summary or object of the invention, Explanation of any of the patent drawing, Description of the invention, Patent claims, Patent abstracts of the disclosure and sequence listing.

- ✚ Filing the patent application in India- Once the patent application is drafted, the inventor need to file a patent application in India and to secure the filing date. If the application is provisional then complete specification shall be filed within twelve months from the date of filing of the application. And if the complete specification is not filed within that specific time, then the application shall deemed to be rejected.

Every application needs to be filed in the prescribed forms which are mentioned below.

Form 1- Application for grant of a patent.

Form 2- Provisional/Complete specification

Form 3- Statement about foreign application under section 8 of the patent act

Form 5- Declaration as to inventor ship (It can only be filed with the complete application)

Form 26- Authorization of a patent agent

Form 28- Submitted by small or startup entity (it is only required if the inventor is claiming startup or for small entity).

If the inventor is claiming priority from a foreign patent application and entertaining India, he may be required to provide the priority document.

- ✚ Publication of Patent Application- Every Patent Application is published in the official journal after 18 months period from the date of filing of application or the date of priority of application whichever is earlier. There is also a provision mentioned for early publication of an Indian Patent application by filing a formal request.
- ✚ Examination of Patent Application- The patent application is examined by the authorities and the Controller examines the Patent Application, it is done only after receiving of the request for examination.
- ✚ Grant of Patent- If the patent application satisfies all the specified criteria for a Patent Registration and it will be granted by the Controller, published in the official gazette of the Patent Office in India and issue a certificate for the registration to the Applicant.
- ✚ Renewal- After the grant of the patent application, it needs to be renewed from 3rd year onward by paying renewal fees as prescribed. A patent in India can be renewed for maximum period of 20 years from the date of filing.

Conclusion

It is mandatory that each and every step need to be followed carefully and as per the Patent Act 1970 and Rules. Therefore, it is always suggested to appoint or consult an expert in this field for the Registration of the Patent Application.