

## **PATENT FAQS**

### ➤ **What is a Patent?**

A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

Patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party. A patent owner has the right to decide who may – or may not – use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others. Patents provide incentives to individuals by offering them recognition for their creativity and material reward for their marketable inventions. These incentives encourage innovation, which assures that the quality of human life is continuously enhanced.

### ➤ **What is the validity of a Patent:**

The protection is granted for a limited period, generally 20 years from the date of filing the application. However, for applications filed under national phase under Patent Cooperation Treaty(PCT), the term of patent will be 20 years from the international filing date accorded under PCT

### ➤ **Does Indian Patent give protection worldwide?**

No. Patent protection is a territorial right and therefore it is effective only within the territory of India. There is no concept of global patent.

However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries or under PCT, within or before expiry of twelve months from the filing date in India. Patents should be obtained in each country where the applicant requires protection of his invention

➤ **What can be patented?**

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non-patentable under sections 3 and 4 of the Act.

➤ **Who can apply for a patent?**

A patent application can be filed either by true and first inventor or his assignee, either alone or jointly with any other person. However, legal representative of any deceased person can also make an application for patent.

➤ **What is the criteria of patentability?**

An invention is patentable subject matter if it meets the following criteria –

- It should be novel.
- It should have inventive step or it must be non-obvious
- It should be capable of Industrial application.
- It should not attract the provisions of section 3 and 4 of the Patents Act 1970

➤ **What types of inventions are not patentable in India?**

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations: –

- an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- the mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- the mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- a substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

- the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- a method of agriculture or horticulture;
- any process for medicinal, surgical, curative, prophylactic (diagnostic, therapeutic) or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- a mathematical or business method or a computer program *per se* or algorithms;
- a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- a mere scheme or rule or method of performing mental act or method of playing game;
- a presentation of information;
- topography of integrated circuits;
- an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components;
- inventions relating to atomic energy;

➤ **When should an application for a patent be filed?**

An application for a patent can be filed at the earliest possible date and should not be delayed. An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention. Delay in filing an application may entail some risks such as (i) some other inventor might file a patent application on the said invention and (ii) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

➤ **Can any invention be patented after publication or display in the public exhibition?**

Generally, an invention which has been either published or publicly displayed cannot be patented as such publication or public display leads to lack of novelty. However, under

certain circumstances, the Patents Act provides a **grace period of 12 months** for filing of patent application from the date of its publication in a journal or its public display in an exhibition organised by the Government or disclosure before any learned society or published by applicant. The detailed conditions are provided under Chapter VI of the Act Section 29-34).

➤ **Does the Patent Office keep information of the invention secret?**

Yes. All the patent applications are kept secret upto 18 months from the date of filing or priority date whichever is earlier and thereafter they are published in the Official Journal of the Patent Office which is published every week and also available on the IPO website. After its publication, public can inspect the documents and also may take the photocopy thereof on payment of the fee as prescribed.

➤ **Is there any jurisdiction for filing patent application in India?**

Yes, India has four patent offices located at Kolkata, New Delhi, Mumbai and Chennai. Each office has a separate territorial jurisdiction. The appropriate office for all proceedings including filing of the application depends normally where the applicant/first mentioned applicant resides/has domicile/has place of business/has origin of invention. In case of foreign applicants, it depends on the address for service in India given by such applicant.

➤ **What are the types of applications?**

- **PROVISIONAL APPLICATION**-Indian Patent Law follows first to file system. A provisional application is an application which can be filed if the invention is still under experimentation stage. Filing a provisional specification provides the **advantage to the inventor since it helps** in establishing a —priority| date of the invention. Further, the inventor gets 12 months' time to fully develop the invention and ascertain its market potential and to file the complete specification.
- **ORDINARY APPLICATION**-An application for patent filed in the Patent Office without claiming any priority either in a convention country or without any reference to any other earlier application under process in the office. Such type of application is known an ordinary application.
- **CONVENTION APPLICATION** An application for patent filed in the Patent Office, claiming a priority date based on the same or substantially similar application filed in one or more of the convention countries is known as a convention application. In order to get convention status, an applicant should file the application in the Indian Patent Office within 12 months from the date of first filing of a similar application in the convention country.

- **PCT INTERNATIONAL APPLICATION** An Application filed in India as Receiving Office (RO) under Patent Cooperation Treaty is an international application which can be filed in more than 150 countries by a single application.
- **PCT NATIONAL PHASE APPLICATION** When an international application is made according to PCT designating India, an applicant can file the national phase application in India within 31 months from the international filing date or the priority date, whichever is earlier.
- **PATENT OF ADDITION** When an invention is a slight modification of the earlier invention for which he has already applied for or has obtained patent, the applicant can go for patent of addition if the modification in the invention is new. One of the benefits of filing patent of addition is that there no need to pay separate renewal fee for the patent of addition during the term of the main patent and it expires along with the main patent.
- **DIVISIONAL APPLICATION** When an application claims more than one invention, the applicant on his own or to meet the official objection on the ground of plurality or distinct invention may divide the application and file two or more applications, as the case may be for each of the inventions. This type of application, divided out of the parent one, is known a Divisional Application. The priority date for all the divisional applications will be same as that of the main (the Parent) Application (Ante-dating).

➤ **What are the benefits of Patent?**

- A patent gives you the right to stop others from copying, manufacturing, selling or importing your invention without your permission
- You get protection for a pre-determined period allowing you to keep competitors at bay
- You can then use your invention yourself
- Alternatively, you can license your patent for others to use it or sell it, as with any asset. This can be an important source of revenue for your business. Indeed, some businesses exist solely to collect the royalties from a patent they have licensed - perhaps in combination with a registered design and trademark.