

Basics concepts of Patent

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The word 'Patent' is derived from the Latin word 'Patere' which means, "to open". The patent can be granted to an individual, Institution, or organization, for his invention, for a period of 20 years and in limited territory, but, in turn, the inventor should fully disclose the details of his inventions. Ideas can't be patented. Patent provides to owner of the patent an exclusive right that prevents the third parties without the consent of the patent holder, to make or sell using the patented product or technology. It is a negative right that prevents others from using the patented information without the legal consent of the inventor or patent holder. Any individual residing in a country where the patent has not been filed, can be able to exploit the patent for commercial purposes in that country, without any restrictions.

Types of patent

1. Standard Patent
Also called as an ordinary patent.
2. A Patent of Addition
This type of patent is granted for any improvement or modification of the invention that has been already granted with a patent and remains in force only till the original invention remains in force.
3. Utility Model Patents
These are patents granted for a short period for simple devices, in some countries such as Australia, China, Japan, etc.
4. Plant Patents
It's been granted in some countries like USA.

Basic requirements for patenting an invention

1. Novelty
An invention is novel when it has not been known to the public anywhere in the world on the date of patent application.
2. Non-obviousness
The invention must be non-obvious to a person skilled in the art.
3. capable of industrial application
4. First to file

Patent can't be applied for the following things:

- i) Any frivolous inventions which are contrary to the well-established natural laws;
- ii) An Invention for which the primary use would be contrary to law, public order or morality or causes serious prejudice to human, animal or plant life or health or to the environment or which is injurious to public health;
- iii) The mere discovery of a scientific principle
- iv) Discovery of any living thing or non-living substance occurring in nature

iv) A substance obtained by a mere admixture.

Stages in grant of patent

The application procedure related to securing a patent has been discussed in detail in Chapter III and IV of the Patents Act, 1970 and in Chapter I and II of the Patents Rules, 2003.

The following stages are involved in obtaining a patent:

- a) Filing of an application
- b) Publication
- c) Request for examination by the applicant or interested person
- d) Examination and issuance of examination report to the applicant
- e) Meeting of objections and disposal of pre-grant opposition (if any)
- f) Grant of patent and issue of certificate of patent
- g) Payment of renewal fees.

Types of patent applications

- i) Ordinary application – are those applications where no priority is claimed
- ii) Convention application - are those applications where one or more priorities are claimed
- iii) National phase application - are those applications that enter national phase under Patent Cooperation Treaty (PCT)
- iv) PCT international applications - are those applications which are filed under Patent Cooperation Treaty (PCT)
- v) Divisional application - are those applications which are divided out of the parent application containing plurality of distinct inventions.
- vi) Patent of addition – are those applications where invention pertains to improvement of the existing application or patent.

Patent application

Application for grant of a patent is to be made on Form 1 as prescribed in the Second Schedule of the rules:

- a) Particulars to be given for all types of application
 - 1) Name, nationality, address of the applicant
 - 2) Name, nationality, address of the inventor(s)
 - 3) Title of the invention
 - 4) Address for correspondence of applicant /authorized patent agent in India
- b) Additional particulars to be given depending on the type of application
 - For convention application
Priority particulars of the application filed in the convention country
 - For national phase application
Particulars for filing Patent Cooperation Treaty (PCT) National Phase Applications
 - For divisional application
Particulars of original application- number and date of filing
 - For patent of addition
Particulars of main application/ patent number and date of filing
- c) In addition, following declaration(s) should be given
 - a) By inventors that they are true and first inventors of the invention or the applicants are their assignee/legal representative
 - b) By the applicants in the convention country that applicants are their assignee or legal representative (For Convention application)

c) By the applicants that:

- they are in possession of the invention,
- the application is accompanied by provisional /complete specification,
- there is no lawful ground of objection to the grant of patent,
- necessary permission from competent authority for use of biological materials,
- applicant is the assignee or legal representative of first inventor,
- application in India is based on International application filed under PCT (For national phase application),
- application is divided out into the original application, particulars of which are given in para-7 of Form1 and pray that this application is treated as deemed to be filed on (date of the original application) under section 6 of the act (For divisional application),
- said invention is an improvement in or modification of the invention particulars of which are given in para -8 of Form1 (For patent of addition).

d) Each application should be accompanied by the following attachments

- a) Provisional specification /complete specification stating number of pages and claims
- b) Drawings (if any) stating number of drawing sheets
- c) Priority documents
- d) Translation of priority document/specification/applicant is not legally bound to submit
- e) Statement of undertaking of corresponding applications on Form 3
- f) Declaration of inventorship on Form 5
- g) Sequence listing in electronic form
- h) Abstract of the invention in 150 words
- i) Power of authority.

For each of the invention, separate application need to be made and should be signed by the applicant in whose favour power of attorney has been executed. Each application must be filed at the appropriate office along with the fee as prescribed in the first Schedule of the Rules.

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