

**INTELLECTUAL PROPERTY  
INFORMATION BOOKLET**

## INTELLECTUAL PROPERTY

Intellectual Property is a cluster of legally recognized rights for creation of mind, in the form of patents, trademark, copyrights, designs, etc.

According to WIPO (World Intellectual Property Organization) Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

WIPO divides IP into two categories:

**Industrial property**, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

**Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

### PATENTS

Patent gives exclusive rights to the owner of patents to make, use, sale and export patented invention for a limited period of 20 years. Patents are granted for new products, new processes, and new processes for existing produces in India.

A patent is granted for an invention. An invention is defined in section 2(1)(j) as “a new product or process involving an inventive step and capable of industrial application.” Therefore, the criteria for an invention (product or process) to be patentable are –

- (i) it must be novel;
- (ii) it must have an inventive step; and
- (iii) it must be capable of industrial application.

## **Rights of Patentees**

A Patent granted under the Indian Patent Act shall confer upon the patentee-

1. Where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;
2. Where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India

## **Provisional patent application**

When the inventor thinks that he has reached to a presentable form of an invention. However, he still needs to work on the invention. The inventor can go for a provisional patent application. One has to submit the complete specification and claims within one year from the date of filing of provisional patent application. Provisional patent applications are also filed to save novelty and to have a priority date of filing.

## **Timeline**

The prosecution of a patent application generally takes around two years plus from the date of filing in India. However, it also depends upon the publication and examination of the patent application.

## **Patent Lifecycle**

The patent lifecycle generally include steps such as disclosing the invention, a prior art search, patent application filing, publication, opposition (if any), examination, and grant/rejection followed by renewal of the patent after grant.

## **PRIOR ART**

Prior art also known as state of the art, which in most systems of patent law constitutes all information that has been made available to the public in any form before a given date that might be relevant to a patent's claims of originality. If an invention has been described in the prior art, it is said to be in public domain and does not satisfy the criteria of novelty.

### **Relevant Patent Search Engines**

- Delphion <http://www.delphion.com/>
- European Patent Search [http://ep.espacenet.com/quickSearch?locale=en\\_ep](http://ep.espacenet.com/quickSearch?locale=en_ep)
- Free Patents Online- Advanced Patent Search <http://www.freepatentsonline.com/search.html>
- Fresh Patents <http://www.freshpatents.com/>
- Japanese Patent Search on IP Digital Library [http://www.ipdl.inpit.go.jp/homepg\\_e.ipdl](http://www.ipdl.inpit.go.jp/homepg_e.ipdl)
- Patent Storm <http://www.patentstorm.us/>
- USPTO Issued Patents Quick Search <http://patft.uspto.gov/netahtml/PTO/search-bool.html>
- USPTO Published Applications Quick Search <http://appft1.uspto.gov/netahtml/PTO/search-bool.html>
- Wiki-Patent Search <http://www.wikipatents.com/>

## **TRADEMARK**

Trademark means a mark capable of being represented graphically and which is capable of distinguishing goods or services of one person from those of the others and may include shape of goods, their packaging and combination of colors. A trade mark / brand name is a visual symbol which may be a word signature, name, device, label, numerals or combination of colors used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking. Further, it is a type of intellectual property, and typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements. There is also a range of non-conventional trademarks (eg: sound) comprising marks which do not fall into these standard categories.

A trademark is designated by the following symbols:

- <sup>TM</sup> (for an unregistered trademark, that is, a mark used to promote or brand goods)
- <sup>SM</sup> (for an unregistered service mark, that is, a mark used to promote or brand services)
- ® (for a registered trademark)

### **Who can apply for a trade mark and how?**

Any person claiming to be the proprietor of a trade mark used or proposed to be used by him may apply in writing in prescribed manner for registration. The application should contain the trade mark, the goods/services, name and address of applicant and agent (if any) with power of attorney, period of use of the mark and signature. The application should be in English or Hindi. It should be filed at the appropriate office.

### **Functions of Trademark**

- It identifies the goods / or services and its origin.
- It guarantees its unchanged quality
- It advertises the goods/services
- It creates an image for the goods/ services.

Under the Trademarks Act; Goods and Services have been classified into 45 different classes and the applicant will have to ascertain as to which of the classes their goods fall under. Sometimes, the business of the applicant may relate to similar goods but (like tooth paste and tooth brush) under 4th Schedule of the Trademarks Act, these goods fall under different categories since 2 applications may be necessary to secure complete protection.

### **Trade Mark Lifecycle Management (India)**

1. **AVAILABILITY SEARCH:** It is advisable before applying for registration of a mark to carry out a search amongst the records of the trade marks maintained at the Trade Marks Registry to ascertain whether any such trade mark / service mark is already registered or pending registration to ascertain its registrability.

No such search may be conducted if you are certain that no identical or closely similar mark to the marks you intend to register is already in use or registered in respect of same goods or description of goods.

A search report will be sent to you within three working days on receipt of your instruction for conducting the search.

2. **APPLICATION FOR TRADEMARK:** Further, an application in the form prescribed must be lodged with proper office of the Trade Marks Registry.
3. **FORMALITIES CHECK PASS AND NICE CLASSIFICATION:** In this step the application is checked on the basis of legal requirements of the application, and it is sent for NICE classification. This may take one plus months time.
4. **EXAMINATION:** This application is then examined in the light of provisions of the Trade Marks Act, 1999.

Should this satisfy the conditions laid down by the Statute, the mark will be advertised in the Trade Marks Journal. In case it is not so the requirements of the Trade Marks Office must be complied with.

5. **ADVERTISEMENT BEFORE GRANT:** After this is done and the mark is found unobjectionable, the application is advertised.

Any person is free to oppose the application within 90 days from the date of such advertisement in the Trade Marks Journal.

Should however the application be opposed within 90 days from the date of the publication, the opposition is first decided.

In case it is dismissed, the mark proceeds to registration. But in case the opposition succeeds the application is rejected.

6. The approximate time taken to complete the registration formalities will be 18 to 20 months. (If there is no opposition)

## **Timelines**

The date of filing of trademark is the date of filing. It generally needs 15 to 18 months for registration of trademark from the date of filing. It may be further extended in case of opposition from the examiner or any interested person.

## **COPYRIGHTS**

Copyright is a legal right given to the creators of Literary, Dramatic, Musical and Artistic Works and producers of Cinematograph Films and Sound Recordings. Copyright is a cluster of legally recognized rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.

### **Who can apply?**

Any person who is an author can apply for copyright of a work. A rights owner or assignee or legal heir can also apply for a copyright of respective work.

### **Time period for registration**

It will generally take 15 to 18 months for an original work to get registered with the Copyright Office from the date of filing of the application for copyrights.

### **Term**

The term of copyrights protection in India is for a period of Sixty Years from the beginning of the calendar year next following the year in which the author dies. This is in respect of ORIGINAL LITERARY, DRAMATIC, MUSICAL AND ARTISTIC works.

For CINEMATOGRAPH FILMS, SOUND RECORDINGS, PHOTOGRAPHS, POSTHUMOUS PUBLICATIONS, ANONYMOUS AND PSEUDONYMOUS PUBLICATIONS, WORKS OF GOVERNMENT AND WORKS OF INTERNATIONAL ORGANIZATIONS, the term is 60-year from the date of publication.

## **INDUSTRIAL DESIGN**

Industrial design is a combination of applied art and applied science, whereby the aesthetics and usability of mass-produced products may be improved for marketability and production. The role of an Industrial Designer is to create and execute design solutions towards problems of form, usability, user ergonomics, engineering, marketing, brand development and sales

## **TRADE SECRET**

Trade Secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers. In some jurisdictions, such secrets are referred to as "confidential information" or "classified information".

## **GEOGRAPHICAL INDICATION**

A geographical indication (GI) is a community right owned by group of people for certain goods which corresponds to a specific geographical location or origin (e.g. a town, region, or country). The use of a GI may act as a certification that the product possesses certain qualities, or enjoys a certain reputation, due to its geographical origin. For example – Darjeeling Tea, Solapur Chaddar, Mysore Silk.

### **Who can apply for a patent? Who is entitled to apply for a patent in India?**

An Application for a Patent for an invention may be made by any of the following persons either alone or jointly with any other person:

1. True and first inventor
2. True
3. and first inventor's assignee
4. Legal representative of deceased true and first
5. inventor or his/her assignee

The term "person" as defined in the Patents Act includes Government. The term —person as defined in the General Clauses Act, 1897 includes any company or association or body of



individuals, whether incorporated or not. In the case of a limited partnership, the Application may be in the names of all personally responsible partners.

True and first inventor does not include either the first importer of an invention into India or person to whom an invention is first communicated from outside India. The applicant is required to disclose the name, address and nationality of the true and first inventor.

Assignee can be a natural person or other than a legal person such as a registered company, a research organization, an educational institute or Government. Assignee includes assignee of an assignee also. Wherever, the inventor(s) is/are not the applicant, a proof of right to apply by way of an endorsement in the Application form (Form 1) or an assignment deed shall be submitted.

Legal representative means a person who in law represents the estate of a deceased person. In such a case, the Legal Representative may be required to file appropriate legal instruments as Proof of Right

In case of a convention application, the legal representative or assignee of the applicant in the Convention country can also file a Patent Application in India.

### **Inventions not patentable**

According to Section-3 of Indian patent act-1970. The following inventions are not patentable-

1. An invention, that is frivolous or that claims anything obviously contrary to well established natural laws;
2. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health;
3. The mere discovery of a scientific principle or the formulation of an abstract theory;
4. 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;
5. A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
6. The mere arrangement or rearrangement or duplication of known devices, each functioning independently of one another in a known way;
7. A method of agriculture or horticulture;
8. Inventions relating to atomic energy.

9. Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or animals.
10. Plants and animals in whole or any part thereof other than microorganisms.
11. Mathematical or business method or a computer program per se or algorithms.
12. literary, dramatic, musical or artistic works, cinematographic works, television productions and any other aesthetic creations.
13. Mere scheme or rule or method of performing mental act or playing game.
14. Presentation of information.
15. Topography of integrated circuits.
16. An invention which in effect, is traditional knowledge or is based on the properties of traditional knowledge.

**Explain with examples that an invention which is frivolous or which claims anything obviously contrary to well established laws is not an invention in not patentable in India**

Some examples of a frivolous nature and contrary to natural laws are:

1. A machine purporting to produce perpetual motion.
2. A machine alleged to be giving output without any input.
3. A machine allegedly giving 100% efficiency.

An invention, the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment is not an invention.

Some examples are:

Any device, apparatus or machine or method for committing theft/burglary.

- b. Any machine or method for counterfeiting of currency notes.
- c. Any device or method for gambling.
- d. An invention the use of which can cause serious prejudice to human beings, plants and animals.
- e. Inventions, the intended use or commercial exploitation of which is found to be injurious to public, animal or plant life or health, such as, a method of adulteration of food.
- f. An invention, the primary or intended use of which is likely to violate the well accepted and settled social, cultural, legal norms of morality, e.g. a method for cloning of humans.
- g. An invention, the primary or proposed use of which would disturb the public order e.g. a device for house

-breaking.

h. However, if the primary or intended purpose or commercial exploitation of a claimed invention is not causing serious prejudice to human, animal or plant life or health or to the environment, such subject matter may be considered to be an invention and may be patentable. For instance, a pesticide

### **FAQ on Patents**

#### **1. What is a patent?**

Patent is an exclusive right granted by the patent office to an applicant in respect of a new product or process. Such a product or process simultaneously satisfies the three criterion of Novelty, Inventive Step and Industrial applicability on the date of filing of the patent application.

#### **2. Who can apply for patents?**

An individual person or a legal entity and/or both can apply for a patent.

#### **3. How many persons can apply for a patent? Is there any limitation for number of applicant or inventors for a patent?**

A patent application needs to have at least one applicant while applying for the patent. However, there is no limitation on number of Applicants/inventors. It may include 'n' number of applicants/inventors.

#### **4. Is there any difference between an applicant and inventor?**

Yes. Applicant is someone who applies for the invention and in the name of whom the patent is granted. Inventor is someone who conceives/contributes the invention but never owns the invention. Applicant can be a natural person and/or a legal entity. Inventor is always a natural person.

#### **5. Can a company become inventor?**

No. A natural person can be an applicant and inventor both, but a legal entity can only be an Applicant and can never be an inventor.

#### **6. Can I file a patent application to protect my idea?**

No. mere abstract ideas can never get a patent. However, idea may be protected under patents when it transforms into a physically existing model that passes all three criterion of patentability namely Novelty, Inventive step and Industrial applicability.

#### **7. What is a criterion on the basis of which a patent is granted in India?**

The patents are granted on three criteria of patentability namely Novelty, Inventive step and Industrial applicability. Novelty is the criteria that ascertains that the invention is not in public domain before the date of filing of the patent application without being anticipated by the prior art. Inventive step is the criteria that ascertains that the invention is having technical advancement over the prior art without being just combination of known things in the prior art.

Industrial applicability is the criterion that ascertains that the invention is capable of being made or used on industrial scale.

**8. What is difference between invention and patentable invention?**

Invention means a product/process that passes at least one criterion of the patentability but failing to qualify as a patent as it lacks at least on criterion of patentability. Patentable invention is something that passes all the three criterion of patentability.

**9. What is meaning of term of a patent?**

Patent is a cluster of exclusive rights that is granted to Applicant for a limited period. However, the period as per Indian Patents Act is 20 years from the date of filing of the patent application.

**10. Can you explain how will you make sure that the confidentiality of my invention will be maintained at your end?**

A relationship between an applicant/ inventor and the patent agent is governed by an established principle known as Attorney-Client relationship. This relationship specifically prevents the patent attorney (agent) from disclosing the invention to anyone thereby keeping the communication confidential. This is a better option than Non-disclosure agreements that are used in tandem now a days. The non-disclosure agreement has major limitation that the communication between Attorney and the client needs to be disclosed in front of judge in the court of laws. However, the Attoreny-Client privilege relationship facilitates the Attorney not to disclose the communication even in front of the judge in the court of laws.

**11. What is the minimum time to receive a patent in India?**

There is no specific min. time to receive patent is mentioned in the patents act. However, Applicant may opt for Publication and Examination procedures that can be expedited in India by filing appropriate forms. This enables the examination procedure to start substantially earlier than routine patent application process flow.

**12. Can I get a worldwide protection if have an Indian Patent on my name?**

Yes. WIPO provides a facility named PCT that facilitate prosecution of an International patent application by claiming a priority of an Indian patent application. PCT mainly has two phases namely an International phase and a national phase. The international phase facilitates filing and publication of the international application under PCT. The national phase facilitates the application to be independently prosecuted for grant in each country that is signatory to the PCT. It is to be understood here that PCT is a International filing system and not a granting system and there is nothing like an international patent

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