



Patent

Patent right is a form of industrial property. The owner can sell the whole or part of his property. These rights could be licensed for commercial purposes. Patent Law is governed by the Indian Patent Act, 1970 and the Patent Rules, 2003. The word 'Patent' under the Patent Act means, exclusive right to use or exercise an invention granted to a person for a limited period in consideration of the disclosure of the invention. Patent rights are granted only to new inventions capable of industrial application. Patent is a statutory right, which accrues to the inventor on registration of his invention with the Patent Office.

Period of Patent

Patent rights are granted to the patentee by the Controller of Patents. The Head Office is located at Calcutta with branches at Delhi, Mumbai and Chennai. Section-53 of the Act lays down the term of Patent after the commencement of the Patents (Amendment) Act, 2002 or the terms of every patent, which has not expired and has not ceased to have effect, on the date of such commencement under this Act, shall be 20 years from the date of filing of the application for the patent.

Who can apply for Patent:

An application for patent for invention can be made by any of the following persons:

1. By any person claiming to be the true and first inventor;
2. By any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such application. Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application or within three months from filing the application, proof of the right to make the application;
3. By the legal representative of any deceased person who immediately before his death was entitled to make such application.

Procedure

Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the Patent Office. Every patent application must be accompanied by complete specifications. The specifications shall be filed in triplicate. The specification shall contain an introductory paragraph to the invention followed by a statement of prior art if known to the applicant, and then drawbacks of the present state of

art succeeded by the objects of the present invention. Thereafter, the statement of invention followed by a detailed description of invention with reference to the drawings and lastly ending with claims. The claims shall relate to a single invention and be clear and specific. The principal claim shall define the essential novel features of the invention and be in one single continued sentence. Optional features may be made the subject matter of subordinate claims. The drawings shall be filed in triplicate and the original shall be on tracing cloth, or transparent or semi-transparent sheet.

After all objections are complied with, the Controller of Patent will accept the specifications and advertise such acceptance in the Official Gazette and keep it open for public inspection. If there is no opposition or the opposition proceeding is finally decided in favour of the applicant, a patent is sealed upon the request from the applicant in the prescribed manner.

Patent Cooperation Treaty (PCT)

Patent Cooperation Treaty (PCT) is administered by the Geneva based agency, World Intellectual Property Organisation (WIPO), which was established in 1967. Its preamble states clearly that PCT is intended to help the economic development of developing countries by giving a boost to the flow of technology. On December 7, 1998 India became a PCT Contracting State by becoming a party to the Paris Convention.

The Paris Convention is an international convention which aims at promoting trade among the member countries and facilitating protection of industrial property simultaneously in member countries without any loss in the priority date. Currently, 151 countries are members of the Convention. The main features of the Paris Convention are National treatment, Right of Priority, Independence of patents, Parallel importation, and Protection against false indications and unfair competition. National treatment, which is necessary for achieving the fundamental objective of the Paris Convention, aims to provide equal treatment to applicants from member countries in a given member country and not to distinguish between the nationals of the given country with those of other countries for the purpose of grant and protection of industrial property in the given country. The Convention provides that for facilitating simultaneous protection in member countries, within 12 months of national filing, if patent applications are filed in member countries, the patents, if granted in member countries, will be effective from the date of filing. This is known as the right of priority.

PCT is open only to members of the Paris Convention. The PCT system is a patent 'filing' system and not a patent 'granting' system. There is no PCT patent. The PCT system provides for an international phase comprising filing of the international application, international search, international publication and international preliminary examination, and a national/regional phase before designated offices. The decision to grant patents in the national phase is taken exclusively by national or regional offices.

Only inventions can be protected by the PCT by applying for patents, utility models and similar titles. Design and trademark protection cannot be obtained via the PCT. Separate

international conventions deal with these types of industrial property protection (the Hague Agreement and the Madrid Agreement respectively).

There are various benefits of using the PCT. One application, in one language, filed with one office, replaces multiple foreign filings until entry into the national phase. It permits last minute foreign filing before expiration of priority year. International filing date has the effect of national filing date in all designated offices. There is greater home control of the prosecution. Decision on foreign filings can be postponed up to 30 months from the priority date at minimal cost. It enables assessment of economic value of the invention and the chances of obtaining a patent before entering national phase.

Furthermore, there is a greater flexibility. Options are kept open by virtue of multiple designations. Various possibilities for withdrawal are available. International publication can be prevented or postponed until as late as 15 days before the actual publication date. Conditional withdrawal is possible. Merely, by no longer prosecuting the application or not entering the national phase further, expenses can be avoided. Amendments made during the international phase are effective in all designated/selected States. There is more time for better quality translation and better planning of the expenditures for the national phase.

Postponing of national filing costs, earns interest on capital. Fee reductions in the national phase in certain national offices are available. National patent granting is more straightforward and rapid. There is provisional protection after publication at 18 months from the priority date (countries which afford such protection) and a 75% reduction in PCT fees for applicants from certain Contracting States. India is one such Contracting State.

A PCT applicant may be any natural person or legal entity, for instance, the assignee, the inventor, etc. It is possible to indicate different applicants for different designated States. For example, if the US is designated, the inventor(s) must be indicated as applicant(s) for the US, or, in case of a deceased inventor, the legal representative, heir(s), etc. At least one of the applicants must be a national or resident of a PCT Contracting State.

The PCT provides for applicants to seek an international preliminary examination of their international applications. For international preliminary examination, the applicant must clearly indicate for which of the Contracting States designated in the international application he wants the examination procedure to be carried out. Such states are called elected states. A significant effect of the election of a State is that the start of the national or regional phase before the elected office is postponed by a further period of ten months (which comes to a total of 30 months) from the priority date, provided the election is made before the expiration of 19 months from the priority date. In some elected offices the time limit expires even later. If an election has been made after the termination of 19 months from the priority date, then it does not have the effect of postponing the national phase.