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# Restoration of lapsed patents in India

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# Application for restoration of lapsed patents (Section 60 and Rule 84)



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- Patent has ceased to have effect due to **non payment of renewal fee** with in the prescribed time [u/s 53 and 142 (4)].
- Application for restoration of patent – **Form 15** (within **18 months** from the date on which the patent ceased to have effect).
- With **statement and evidence** to support the patentee's claim that failure to pay was **unintentional** and there has been **no undue delay** in applying for restoration.



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# PROCEDURE FOR DISPOSAL OF APPLICATION FOR RESTORATION

## Section 60, 61 and 62 Rule 84, 85 and 86



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- When the Controller is prima facie satisfied that the failure to pay renewal fee was unintentional and there has been no undue delay, the application will be **published** in the official journal.



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- If the Controller is satisfied prima facie case for restoration has not been made, the Controller may issue a notice to the applicant to that effect.
- Within **1 month** from the date of notice, if the applicant makes a **request to be heard** on the matter he shall be given and the restoration application may be disposed.
- If no request for hearing is received within one month from the date of notice by the Controller, the application for restoration is refused.



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- **Notice of opposition – Form 14**
- Any person interested may give notice of opposition in the prescribed manner, to the application within **two months** from the date of publication in the Official Journal on the grounds that failure to pay the renewal fee was not unintentional and there has been undue delay in the making of the application.



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- The notice of opposition shall be sent to the applicant expeditiously by the Controller.
- The procedure specified in rules 57 – 63 for post grant opposition for filing written statement, reply statement, reply evidence, hearing and cost shall apply in this case.





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- If No opposition – the Controller shall issue an order allowing the application for restoration.
- The **unpaid renewal fee and the additional fee**, as mentioned in the First schedule, shall be paid within **1 month** from the date of order of the Controller.
- The fact that the **patent has been restored** shall be published in the Official Journal.



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- To protect the persons who have begun to use the applicant's invention between the date when the patent ceased to have effect and the date of publication of application for restoration, every order for restoration includes the provisions and other conditions, as the Controller may impose for protection and compensation of the above mentioned persons.



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- **No suit or other proceedings shall be commenced in respect of an infringement of a Patent committed between the date on which the patent ceased to have effect and the date of publication of application for restoration of the Patent.**



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