

THE INDIAN PATENT ACT - 1970

INTELLECTUAL PROPERTY

- Intellectual property is the product or creation of the mind. It is different from other properties in term that it is “intangible”. Hence it needs some different way for its protection.

INTELLECTUAL PROPERTY RIGHTS

- IPR is the body of law developed to protect the creative people who have disclosed their invention for the benefit of mankind. This protects their invention from being copied or imitated without their consent.



THE INDIAN PATENT ACT

- In India the grant of patents is governed by the patent Act 1970 and Rules 1972.
- The patents granted under the act are operative in the whole of India.

HISTORY

- ❖ The Patent Law of 1856
- ❖ The Patent and Designs Act, 1911.
- ❖ The Patents Act, 1970 and Rules 1972
- ❖ The Patent amendment act 2005



What is a patent ?

- A patent is a grant from the government which confers on the guarantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted



Purpose of getting a patent.....

- To enjoy the exclusive rights over the invention.
- The patent is to ensure commercial returns to the inventor for the time and money spend in generating a new product.

A close-up photograph of a hand holding a black pen with a gold nib, writing on a white document. The document has some faint, illegible text. The background is blurred.

What can be patented?

- In order to be patentable , an invention must pass four tests;
1. The invention must fall into one of the five “statutory classes’: Processes, Machines , Manufactures
Compositions of matter, and New uses of any of the above
 2. The invention must be “useful”
 3. The invention must be “novel”
 4. The invention must be “nonobvious’

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Patent Law - Salient Features

- Both product and process patent provided
- Term of patent – 20 years
- Examination on request
- Both pre-grant and post-grant opposition
- Fast track mechanism for disposal of appeals
- Provision for protection of bio-diversity and traditional knowledge
- Publication of applications after 18 months with facility for early publication
- Substantially reduced time-lines

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Safeguards in the Patent Law

- Compulsory license to ensure availability of drugs at reasonable prices
- Provision to deal with public health emergency
- Revocation of patent in public interest and also on security considerations

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Types Of Patents

- Three types of patent are granted under the provisions of the act, namely:

1. An Ordinary Patent

2. A Patent Of Addition

3. A Patent Of Convention

- A second type of classification of patent is:

1. Product Patent

2. Process Patent



Patentable Inventions

Invention must

- ◆ **Relates to a process or product or both**
- ◆ **Be new (novel)**
- ◆ **Involves an inventive step**
- ◆ **Be capable of industrial application**
- ◆ **Not fall under section 3 and 4**

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“NEW” MEANS.....

Invention must not be

- **Published in India or elsewhere**
- **In prior public knowledge or prior public use with in India**
- **Claimed before in any specification in India**



Inventive step means...

A **feature of an invention** that

- Involves technical advance as compared to the existing knowledge..

Industrial application means...

- Invention is capable of being made or used in any kind of industry.

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Section 3 exclusions

Section 3(a)

- Inventions contrary to well established natural laws

Examples

- Machine that gives more than 100% performance
- Perpetual machine



Section 3(b)

Commercial exploitation or primary use of inventions, which is

- **Contrary to**
 - public order or
 - Morality

Examples

- Gambling machine,
- Device for house-breaking ,



Section 3(b)

Commercial exploitation or primary use of inventions, which

➤ **Causes serious Prejudice to**

- health or
- human, animal, plant life or
- to the environment

Examples

- Biological warfare material or device, weapons of mass destruction
- Terminator gene technology,
- Embryonic stem cell



Non Patentable Inventions

- **Inventions falling within Section 20(1) of the Atomic Energy Act, 1962 are not patentable**

Eg: Inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by Central Govt. from time to time.

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The Term Of Patent :

- ✓ In respect of a invention claming process of manufacture of a substance intended to be used as food or medicine ---- 5 yrs from the date of sealing or 7 yrs from the date of patent whichever is shorter.
- ✓ In case of any other invention ---- 14 yrs from the date of patent.

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Expiry Of A Patent

- A patent can expire in the following ways:
 1. The patent has lived its full term.
 2. The patentee has failed to pay the renewal fee.
 3. The validity of the patent has been successfully challenged by an opponent by filing an opposition either with the patent office or with the courts.
 4. As soon as the patent expires, it pass to the general public domain and now anybody can use it without the permission of the original inventor

A close-up photograph of a person's hand holding a black fountain pen, writing on a white document. The document has some faint, illegible text on it. The background is blurred, showing what appears to be a desk or office environment.

STAGES FROM FILING TO GRANT OF A PATENT

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Obtaining A Patent

- File an application for patent
 - With one of the patent offices based on territorial jurisdiction of the place of office or residence of the applicant /agent
 - Pay the required fee
- Information concerning application form and details of fee available at www.ipindia.nic.in
- Guidelines for applicants also available on this website

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Formality Check

- An Examiner checks the formal requirements before accepting the application and the fee – this is done immediately
- Issue of application number and the cash receipt – this is done the same day
- In case of receipt of application by post, cash receipt, application number is sent by post within 2-3 days

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Publication

- Application is kept secret for a period of 18 months from the date of filing
- In 19th month, the application is published in the official journal – this journal is made available on the website weekly
- Applicant has an option to get his application published before 18 months also
- In that case, application is published within one month of the request

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Request for Examination

- Application is examined on request
- Request for examination can be made either by the applicant or by a third party
- A period of 48 months, from the date of filing, is available for making request for examination

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Examination

- Application is sent to an Examiner within 1 month from the date of request for examination
- Examiner undertakes examination w.r.t.
 - whether the claimed invention is not prohibited for grant of patent
 - whether the invention meets the criteria of patentability

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Issue of FER

- A period of 1 to 3 months is available to Examiner to submit the report to the Controller
- 1 month's time available to Controller to vet the Examiner's report
- First Examination Report (FER) containing list of the objections is issued within 6 months from the date of filing of request

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Response from the Applicant

- 12 months' time, from the date of issue of FER, is available to the applicant to meet the objections
- If objections are met, grant of patent is approved by the Controller – within a period of 1 month

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Pre-grant Opposition

- After publication, an opposition can be filed within a period of 6 months
- Opportunity of hearing the opponent is also available



Examination of Pre-grant Opposition

- Opposition (documents) is sent to the applicant
- A period of 3 months is allowed for receipt of response

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Consideration of Pre-grant Opposition

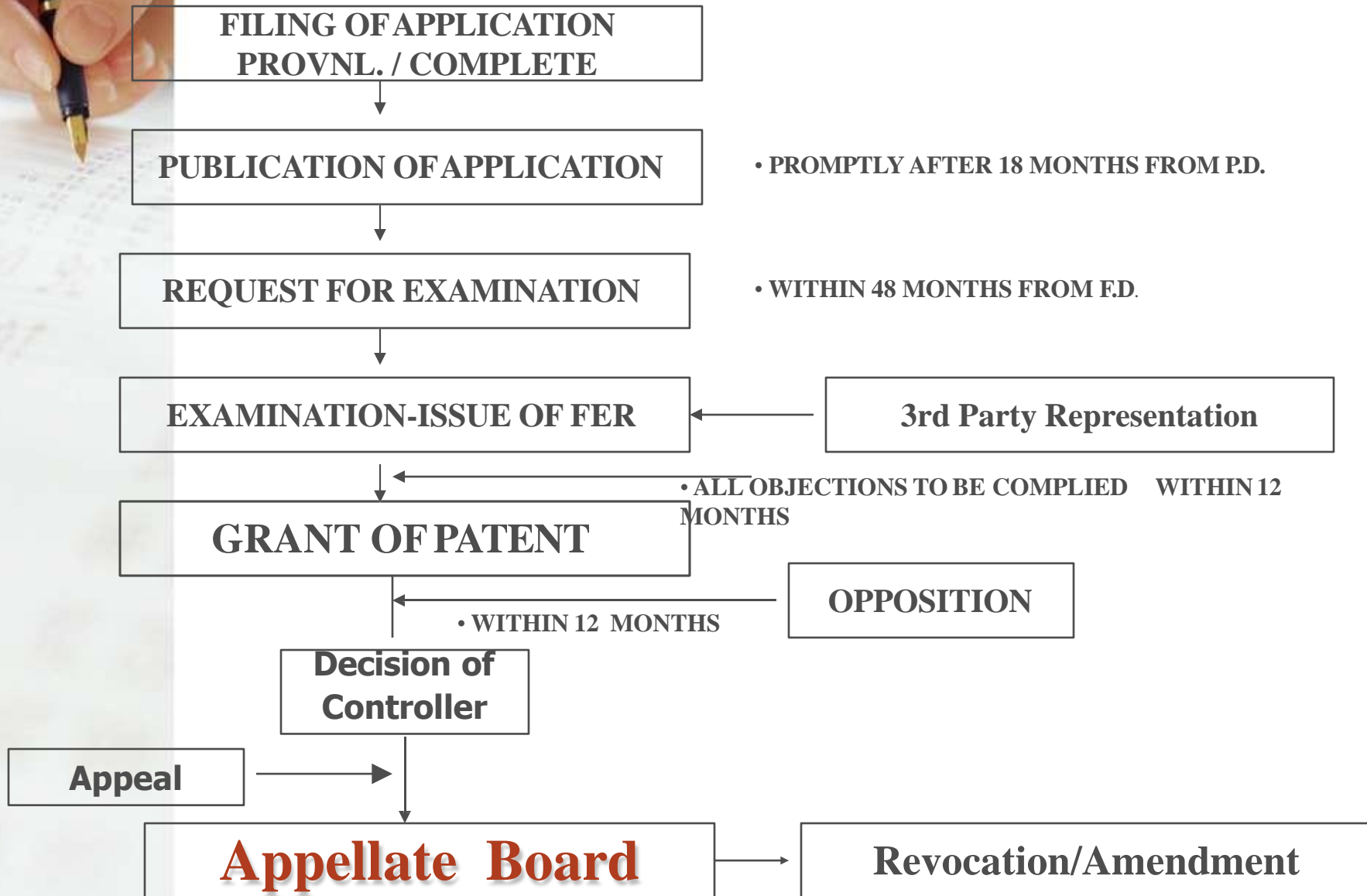
- After examining the opposition and the submissions made during the hearing, Controller may
 - Either reject the opposition and grant the patent
 - Or accept the opposition and modify/reject the patent application
- This is to be done within a period of 1 month from the date of completion of opposition proceedings

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Grant of a Patent

- A certificate of patent is issued within 7 days
- Grant of patent is published in the official journal

STAGES - FILING TO GRANT OF PATENT



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Renewal Fee

- To be paid within 3+6 months from date of recording in the register [sec 142 (4)]
- No fee for 1st and 2nd year
- Renewal fee, on yearly basis, is required to be paid for 3rd to 20th for keeping the patent in force
- Delay upto six months from due date permissible on payment of fee for extension of time
- Patent lapses if renewal fee is not paid within the prescribed period



Rights of a patentee

1. Right to exploit the patent.

- ✓ The patentee has a right to prevent 3rd parties, from exploiting the patented invention.

2. Right to grant license.

- ✓ The patentee has a power to assign rights or grant license.

3. Right to surrender.

- ✓ The patentee is given the right to surrender the patent by giving notice in prescribed manner to the controller.

4. Right to sue for infringement.

- ✓ A patentee is given the right to institute proceeding for infringement of the patent in a district court .

