

FILING OF PATENTS AND THE ESSENTIAL ELEMENTS OF PATENTING

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What is a PATENT?

A **patent** is an exclusive right or rights granted by a government to an inventor for a limited time period in exchange for the public disclosure of an invention. It allows the inventor to exclude all others from making, using, or selling their invention for 20 years.

The theory is that patent protection will provide a reward not only for the creation of an invention, but also for the development of an invention to the point at which it is technologically feasible and marketable, and that this type of an incentive would promote additional creativity and encourage companies to continue their development of new technology to the point at which it is marketable, useful to the public and desirable for the public good.



► Who governs the patent?

The Patent system in India is governed by the Patents Act, 1970 (No 39 of 1970) & The Patents Rules 1972, effective from April 20, 1972.

Subsequently, The Patents Act, 1970 is amended effective from January 1, 1995 & The Patents Rules, 1972 is amended effective from June 2, 1999.

WHO CAN FILE A PATENT APPLICATION?

In India [Section 6 and 134], the application can be filed either alone or jointly by :

- The True and first inventor of the invention
- The Assignee
- A Legal Representative

Where to apply for a patent in India:

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<i>Patent offices</i>	<i>Territorial jurisdiction</i>
Mumbai	The states of Gujarat, Maharashtra, Madhya Pradesh, Goa, Chhattisgarh, The Union Territories of Daman and Diu and Dadra and Nagar Haveli.
Delhi	The states of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttranchal, National capital territory of Delhi and the union territory of Chandigarh.
Chennai	The states of Andhra Pradesh, Karnataka , Kerala, Tamil Nadu and the union territories of Pondicherry and Lakshadweep.
Kolkata (head office)	Rest of India

HOW TO FILE A PATENT APPLICATION?

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A Patent Application can be filed in the patent office

1. Through online(e-filing)

<https://ipindiaonline.gov.in/eipatent/filing/user/NewUserRegistration.aspx>

2. Through post or

3. Can be submitted by hand physically



DOCUMENTS REQUIRED FOR FILING A PATENT APPLICATION

1. Application form [Form 1] :

An application for the grant of patent.

2. Provisional or Complete Specification [Form 2] :

Provisional or complete specification in triplicate. In case if the inventor is at a very early stage the research and development for his invention, then he can go a for provisional application .

It gives him the following benefits:

- * It helps to Secure the filing date
- * There is 12 months of time to file complete specification
- * The cost is very low .

After filing the provisional **patent application**, The inventor secures the filing date which is very crucial in patent world. The inventor gets 12 months of time to come up with the complete specification and up on expiry of 12 months the patent application will be abandoned

When the inventor completes the required documents and his research work is at level where he can have prototype and experimental results to prove his inventive step then he can file complete specification with the patent application.

There is an optional step that is filing the provisional specification , if the inventor is at the stage where he can have complete information about his invention, then he / she can directly go for complete specification.

3. Drawing [in triplicate] (if necessary) :

Drawings or sketches, which require a special illustration of the invention, shall not appear in the description itself and shall be on separate sheet(s), preferably A4.

4. Abstract of the invention (in triplicate/ 3 copies) :

It is a short paragraph describing the invention in a precise manner. An abstract of invention has to be produced as a part of the document.

5. Statement and Undertaking [Form 3] :

It is a form in which the applicant ensures the patent officer that no similar inventions are made outside India and the inventor shall inform the officer updated about the corresponding patent applications filed outside within 6 months from the date of filing of such applications.

6. Priority document :

Only if priority date is claimed. Priority date refers to the earliest filing date in a family of patent applications. It is required for the examination of novelty and inventive step or non-obviousness for the subsequent application.

7. Declaration of Inventorship [Form 5] :

Where provisional specification is followed by complete specification or in case of convention application. The inventor describes that the information given him are true of his invention.

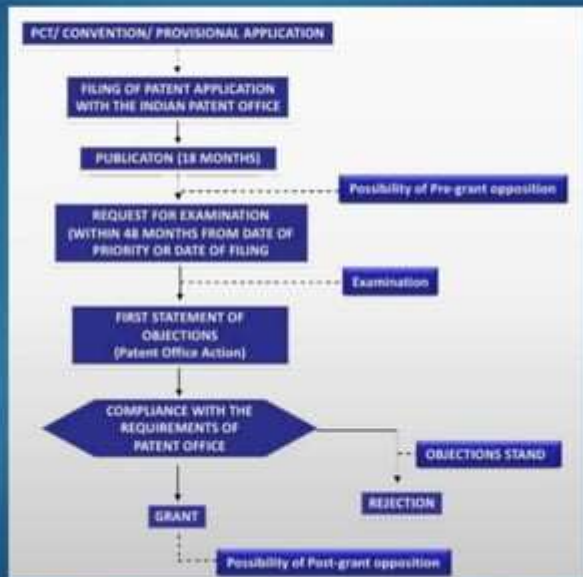
8. Power of Attorney [Form 26] :

Authorization of patent agent or any other person which is also known as POWER OF ATTORNEY is required if filed through Patent Agent.

9. Fee in Cash/ Local Cheque/ DD/ Online Payment

FLOW CHART FOR GETTING A PATENT

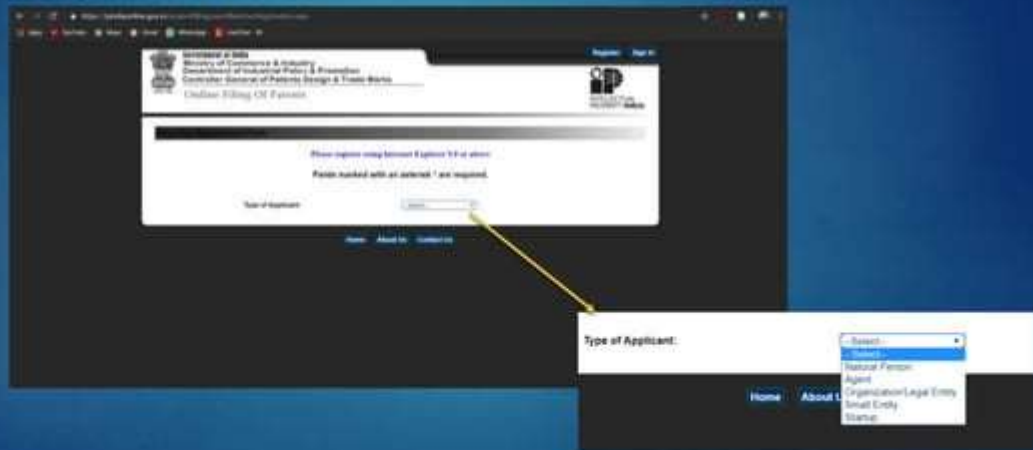
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STEPS OF FILING A PATENT IN INDIA ONLINE :

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- (1) Visit <https://ipindiaonline.gov.in/epatentfiling/user/NewUserRegistration.aspx> and select the type of applicant.



(II) Register yourself by providing the necessary information.

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The screenshot shows the 'Online Filing Of Patents' portal. At the top, it identifies the Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, and the Controller General of Patents Design & Trade Marks. The page title is 'Online Filing Of Patents'. A navigation bar includes 'Register' and 'Sign In' links. The main heading is 'Please register using Internet Explorer 8.0 or above' with a note that fields marked with an asterisk are required. The 'Type of Applicant' is set to 'Individual Applicant' and the 'Digital Signature and User Details' section is active. Under 'Enter Details', there is a 'Full Digital Signature' button and a note that users will be prompted after entering their digital signature. The 'Select an ID and Password' section includes fields for 'Your ID (not more than 10 char)', 'Password', and 'Re Type Password', with a 'Check' button. The 'Full Details' section contains fields for 'Name of Applicant', 'Address for Service for Proceedings', 'Town/City/District', 'State/Union Territory', 'PIN Code (Enter only with Pin Code)', 'Telephone Number(s) (STD Code)', 'Mobile Number(s) (with prefix 9 or 10)', 'E-mail ID', 'Security Question', and 'Answer'. A 'Register' button is at the bottom.

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Controller General of Patents Design & Trade Marks
Online Filing Of Patents

Register Sign In

INTELLECTUAL PROPERTY RIGHTS

Please register using Internet Explorer 8.0 or above
Fields marked with an asterisk * are required.

Type of Applicant: Individual Applicant
Digital Signature and User Details

Enter Details

Full Digital Signature (Users will be prompted after entering Digital Signature)

Select an ID and Password

Your ID (not more than 10 char) [Text Field] [Check]

Password [Text Field]

Re Type Password [Text Field]

Full Details

Name of Applicant [Text Field]

Address for Service for Proceedings [Text Field]

Town/City/District [Text Field]

State/Union Territory [Dropdown Menu]

Pin Code (Enter only with Pin Code) [Text Field]

Telephone Number(s) (STD Code) [Text Field]

Mobile Number(s) (with prefix 9 or 10) [Text Field]

E-mail ID [Text Field]

Security Question [Dropdown Menu]

Answer [Text Field]

Register

(IV) Upload and attach the documents with the application.

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Validate File

that this application may be treated as deemed to have been filed on _____ under sec.15 of the A

The said invention is an improvement in or modification of the invention particulars of which are give

Following are the attachments with the application :

Provisional Specification	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Complete Specification (in conformity with the international application) as amended before the International Preliminary Examination Authority (IPEA), as applicable	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Drawings (in conformity with the international application) as amended before the International Preliminary Examination Authority (IPEA), as applicable	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Priority documents	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Translation of priority document/specification/international search reports	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Statement and undertaking (Form-2)	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Power of Authority	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>
Declaration of Inventor-ship (Form-8)	<input type="checkbox"/>	<input type="button" value="Attach..."/>	<input type="button" value="Preview"/>

Date of Filing Statement & Undertaking on (Form-2))

(M) Upload digital signature for the application in .xml format and submit the application and the keep the reference number for future need.

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Upload Digitally Signed XML File

Browse & Select the file : (File
Size should be less than 2 MB)

Hint : Upload the digitally signed XML file from the folder where you installed the software)
(If you created the file with the name xyz, then upload the file xyz.xml.p7sec)

For future reference

Kindly use the Application Reference Number :
Temp/6/KOL/2007

(VI) Complete the payment to for the successful submission for further process to grant the patent

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Payment

Kindly select Jurisdiction, Bank & Payment mode:

List of Applications waiting for Online Payment

11 July 2007 Clear selection

Click Application(s) for Online Payment

Application Number*	Title Of Invention	Fee Jurisdiction
<input type="checkbox"/> Temp/1910/2007 04	ISS KOUKATA	

* This is a temporary Application Number if payment is made

11 July 2007 Clear selection

You have Selected following Application(s) for Online Payment

Temporary Application Number for Payment	Title of Invention	Fee Jurisdiction	Total Fees to be Paid (RM)
Temp/1910/2007	ISS	0000	
Grand Total			RM

THE ESSENTIAL ELEMENTS OF PATENTING

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PROCEDURE TO GET PATENT:

A patent application can be filed at only of the four patent offices in India (Kolkata, Delhi, Mumbai and Chennai). The patent application passes through the following stages:

- A. Filing
- B. Publication
- C. Examination
- D. Opposition
- E. Grant



A. FILING:

The filing consists of *The Applicant, The Form of Application and Priority Date.*

1. Applicant :

An application for a patent can be filed by the true and first inventor. It can also be filed by the assignee or legal representative of the inventor. If an application is filed by the assignee, proof of assignment has to be submitted along with the application. The applicant can be national of any country.

2. Form of application:

Every application shall be accompanied by a provisional or complete specification. Provisional applications are generally filed at a stage where some experimentation is required to perfect the invention.

Filing of a provisional specification allows the applicant to get an early application date.

A Provisional Specification shall contain:

- a. Title
- b. Written Description
- c. Drawings (if necessary)
- d. Sample or model if required.

The complete specification shall contain:

- a. Title
- b. Abstract
- c. Written Description
- d. Drawings (where necessary)
- e. Sample or Model (if required by the examiner)
- f. Enablement and Best Mode
- g. Claims
- h. Deposit (Microorganisms)

A. TITLE

Title is generally a word or a phrase indicating the content of the invention.

B. ABSTRACT

It is a short paragraph describing the invention in a precise manner.

C. WRITTEN DESCRIPTION

This is an important part of the specification. It contains the complete and elaborate description of the invention.

Written Description generally starts with a background of the invention. The written description explains the invention clearly and comprehensively, with the help of examples, drawings and models, where and when required.

D. DRAWINGS

The written description might be supplemented with drawings, where and when required. The drawings should be clearly labeled and submitted in A4 size paper.

E. SAMPLES OR MODELS

On initiative of the inventor or when required by the patent examiner samples or models might be submitted to the patent office. Such samples or models will provide a better understanding of the invention.

F. ENABLEMENT AND BEST MODE

The applicant has to enable his invention in order to allow a person with ordinary skill in the art to make and work the invention and should also describe the best mode of carrying out the invention.

G. CLAIMS

Claims define the metes and bounds of the invention. They are the most important elements in a specification.

In technical terms, the extent of the protection conferred by a patent, or the protection sought in a patent application. In other words, the purpose of the claims is to define which subject-matter is protected by the patent

H. DEPOSIT

If an invention involves microorganisms, which cannot be described by writing. A sample of the microorganism has to be deposited at an internationally recognized depository. There is an internationally recognized depository at Chandigarh

3. Priority Date :

Priority date is the date of first filing allotted by the patent office to an application. If a provisional application is followed by a complete application, the priority date shall be date of filing of the provisional application

Priority date is the date of reference used by the patent to determine the newness of the invention. If the claimed invention is part of public knowledge before the priority date, it will not be eligible for a patent.

4. Place of Filing :

Patent Application can be filed at any of the four patent offices in India. Patent Offices are located at Kolkata, New Delhi, Chennai and Mumbai.

5. Documents to be submitted at the time of filing :

The following documents have to be submitted at the time of filing a patent application:

- a. Form 1 - Application for the grant of patent.
- b. Form 2 - Provisional or Complete Specification.
- c. Form 3 - Statement and undertaking by the applicant.
- d. Form 5 - Declaration as to inventorship.
- e. Form 26 - Authorization of patent agent or any other person.

FORM 1

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FORM 1		2014-2015	
THE UNIVERSITY OF WEST INDIES 100 UNIVERSITY AVENUE, ST. AUGUSTINE TRINIDAD AND TOBAGO		UNIVERSITY OF THE WEST INDIES 100 UNIVERSITY AVENUE, ST. AUGUSTINE TRINIDAD AND TOBAGO	
NAME OF THE APPLICANT		NAME OF THE APPLICANT	
ADDRESS		ADDRESS	
CITY/TOWN		CITY/TOWN	
COUNTRY		COUNTRY	
TELEPHONE		TELEPHONE	
E-MAIL		E-MAIL	
DATE OF BIRTH		DATE OF BIRTH	
SEX		SEX	
MARRIAGE STATUS		MARRIAGE STATUS	
EDUCATIONAL BACKGROUND		EDUCATIONAL BACKGROUND	
WORKING EXPERIENCE		WORKING EXPERIENCE	
REFERENCES		REFERENCES	
RECOMMENDATIONS		RECOMMENDATIONS	
DECLARATION		DECLARATION	
SIGNATURE		SIGNATURE	
DATE		DATE	

NAME OF THE APPLICANT		NAME OF THE APPLICANT	
ADDRESS		ADDRESS	
CITY/TOWN		CITY/TOWN	
COUNTRY		COUNTRY	
TELEPHONE		TELEPHONE	
E-MAIL		E-MAIL	
DATE OF BIRTH		DATE OF BIRTH	
SEX		SEX	
MARRIAGE STATUS		MARRIAGE STATUS	
EDUCATIONAL BACKGROUND		EDUCATIONAL BACKGROUND	
WORKING EXPERIENCE		WORKING EXPERIENCE	
REFERENCES		REFERENCES	
RECOMMENDATIONS		RECOMMENDATIONS	
DECLARATION		DECLARATION	
SIGNATURE		SIGNATURE	
DATE		DATE	

1. IN CASE OF BIRTH OF APPLICANT THIS SPACE WITHIN AN APPLICATION OF AN APPLICANT IS TO BE USED FOR THE APPLICANT'S SIGNATURE.

2. DECLARATION:

(a) Declaration by the applicant:
I, the undersigned, do hereby declare that the information furnished in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any facts which would render the same untrue or misleading.

(b) Declaration by the sponsor:
I, the undersigned, do hereby declare that the information furnished in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any facts which would render the same untrue or misleading.

(c) Declaration by the sponsor:
I, the undersigned, do hereby declare that the information furnished in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any facts which would render the same untrue or misleading.

3. DECLARATION BY THE APPLICANT:

I, the undersigned, do hereby declare that the information furnished in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any facts which would render the same untrue or misleading.

4. DECLARATION BY THE SPONSOR:

I, the undersigned, do hereby declare that the information furnished in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any facts which would render the same untrue or misleading.

DECLARATION AND THE APPLICANT'S SIGNATURE			
I, the undersigned, do hereby declare that the information furnished in this application is true and correct to the best of my knowledge and belief, and that I am not aware of any facts which would render the same untrue or misleading.			
SIGNATURE			
DATE			

FORM 2	
THE PATENTS ACT, 1970 (39 of 1970)	
* THE PATENT RULES, 2001 PROVISIONAL COMPLETE SPECIFICATION (Sub-section (2) and rule 12)	
1. TITLE OF THE INVENTION	
2. APPLICANT(S) a) Name: b) Nationality: c) Address:	
PREAMBLE TO THE DESCRIPTION	
PROVISIONAL The following specification describes the invention.	COMPLETE The following specification particularly describes the invention and the manner in which it is to be performed.
3. DESCRIPTION (Description shall start from next page.)	
4. CLAIMS (not applicable for provisional specification. Claims should start with the preamble - "I/We claim" on separate page.)	
5. DATE AND SIGNATURE (to be given at the end of last page of specification)	
7. ABSTRACT OF THE INVENTION (to be given along with complete specification on separate page)	
Name: *Repeat names in case of more than one entry. *To be signed by the applicant(s) or by authorized registered patent agent. *Name of the applicant should be given in full, family name in the beginning. *Complete address of the applicant should be given stating the postal index no., locality, state and country. *Indicate the column which is/are not applicable.	

FORM 3

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FORM 3 THE PATENTS ACT, 1970 (20 of 1970) and THE PATENTS RULES, 2003 STATEMENT AND UNDERTAKING UNDER SECTION 8 (See section 8, Rule 12)					
1. Name of the applicant(s)		I/We _____ _____			
		I/We declare			
2. Name, address and nationality of the grant applicant.		(i) that I/We have not made any application for the same/substantially the same invention outside India Or (ii) that I/We who have made this application in _____ abroad _____ abroad/with _____ made for the same/substantially same invention, application(s) for patent in the other countries, the particulars of which are given below:			
Name of the country	Date of application	Applicant in file	Status of the application	Date of publication	Date of grant
3. Name and address of the assignee.		(ii) that the rights in the application(s) has/have been assigned to _____			

	that I/We undertake that upon the grant of patent by the Controller, I/We would keep him informed in writing the details regarding corresponding applications for patents filed outside India within six months from the date of filing of such application. Dated this _____ day of _____ 20____.
4. To be signed by the applicant or his authorized registered patent agent.	Signature _____
5. Name of the natural person who has signed	_____
	To The Controller of Patents, The Patent Office, _____
Note: Strike out whichever is not applicable.	

FORM 5THE FACULTY, 1976
(21-02 1976)**DECLARATION AS TO PARENTSHIP**
(see rule 14 (5))

1. Name (s) of the applicant (s) F No. 1 _____

2. Repeat the address (s) of (s) of these or more than one parents. I hereby declare that the true and first names of the applicant declared in the complete specification filed in pursuance of my own application numbered _____ dated _____ at _____
3. Repeat the name in full, the family name or principal name in the beginning. My _____
4. Repeat the complete address. My _____
5. Repeat the nationality. My _____
- Dated this _____ day of _____ 19____ 20____
6. To be signed by the applicant or the authorized registered patent agent. Signature A. _____
F _____ J.T. _____
7. Name of the nearest person who has signed. If any person named in item 6 or above is not so named in the application, he must sign the following statement:
I swear to the statements referred to in the above declaration, being included in the complete specification filed in pursuance of the stated application.
Signature B. _____
F _____ J.T. _____
8. To be signed by the Director. To _____
The Controller of Patents,
The Patent Office,

M.F.S. 1000 (2011) 400 (10/2011) 100000 10

FORM 26
THE PATENTS ACT, 1970
(38 of 1970)

&
The Patents Rules, 2003
FORM FOR AUTHORISATION OF A PATENT AGENT/ OR ANY
PERSON IN A MATTER OR PROCEEDING UNDER THE ACT
(See sections 137 and 132; and rule 132)

1. Insert the name, address and nationality of the person(s) to be authorised.

2. Insert the name, address and nationality of the person(s) to be authorised to act on their behalf in connection with

3. State the particular matter or proceeding in which the authorisation is made and request that all notices, requirements and communication relating thereto may be sent to such person at the above address unless otherwise specified.

I/We hereby revoke all previous authorisation, if any made, in respect of same matter or proceeding.

I/We hereby assent to the action already taken by the said person in the above matter.

Dated this day of

4. To be signed by the person(s) making this authorisation.

5. Name of the natural person who has signed along with designation and official seal, if any.

To
The Controller of Patents
The Patent Office
at

B. PUBLICATION:

A patent application will be published on expiry of 18 months after the priority date. It can be published earlier, if such a request is made the applicant. The application will not be published if directions are given for secrecy, until the term of those directions expires. It will also not be if the application is withdrawn 3 months before publication date.

On publication, specification including drawings and deposits shall be open for public inspection. The rights of the patentee start from the date of publication but they cannot be enforced until after patent grant.

C. EXAMINATION:

1. Request for Examination

The process of examination starts with a request for examination. The request has to be made within 36 months from the date of priority or filing.

2. Examination

On receiving the request, the controller shall direct the patent application to the Examiner for examination. To start with, the examiner makes a formal examination by verifying the propriety and correctness of all documents filed with the application. Later, he verifies the patentability of the application. The patentability analysis includes all patentability requirements.

After confirming that the application falls within the scope of patentable subject matter, the examiner conducts a prior art search to check if there is prior art, which anticipates the invention claimed. He then verifies the existence of inventive step, Industrial application and Enablement & mode.

The examiner will give the examination report within 1 month from the date of reference by controller and that term shall not exceed 3 months. If the examination report is adverse, the controller sends a notice to the applicant and gives him an opportunity to correct and if necessary, an opportunity of hearing.

The Controller might ask the applicant to amend the application in order to proceed further. If the applicant does not make such changes and does not comply with his requirements, the application might be rejected.

D. OPPOSITION:

1. Pre-grant Opposition

Any person can file an opposition for grant of patent after the application has been published.

Opposition may be filed on any of the following grounds:

- a. Non compliance of patentability requirements.
- b. Nondisclosure or Wrongful disclosure of genetic resources or traditional knowledge.

2. Post-grant Opposition

Any person can file an opposition within a period 12 months after the grant of a patent. It can be based on the following grounds:

- a. Wrongful obtainment of the invention by the inventor.
- b. Publication of the claimed invention before the priority date.
- c. Sale or Import of the invention before the priority date.
- d. Public use or display of the invention.
- e. The invention doesn't satisfy the patentability requirements.
- f. Disclosure of false information to patent office.
- g. Application for the invention is not filed within twelve months from the date of convention application.
- h. Nondisclosure or wrongful disclosure of the biological source.
- i. Invention is anticipated by traditional knowledge.

3. Process of Opposition

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On receiving a notice of opposition, the controller notifies the patentee. He then constitutes an Opposition board to deal with the opposition. The Opposition board decides the issues after giving reasonable opportunity of hearing to both the parties. The Opposition board might invalidate the patent, require amendments or maintain the status quo. If amendments are required, they have to be made within the prescribed period in order to maintain the patent.

E. GRANT:

If the application satisfies all the requirements of the patent act, the application is said to be in order for grant. An application in order for grant shall be granted expeditiously. A granted patent shall be published in the official gazette and shall be open for public inspection.

Every granted patent shall be given the filing date. The patent will be valid throughout the world. A granted patent gives the patent holder the exclusive right to make, use, sell, offer for sale and import the product or use the process. However, the government can make use of the patent for its own purposes or for distributing an invention relating to medicine to hospitals and dispensaries. Furthermore, any person can make use of the patent for experiment or education.

GRANTED

CONCLUSION

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- ▶ A patent can be filed by the inventor, an assignee or a legal representative.
- ▶ Patent can be filed online through e-filing or physically and may be submitted to any of the patent offices at Chennai, Mumbai, Kolkata or Delhi.
- ▶ A patent can be granted by the following steps
 1. Filing
 2. Publication
 3. Examination
 4. Opposition
 5. Grant
- ▶ The essential elements of patenting are
 1. Description
 2. File No
 3. Claims
 4. Abstract
 5. Drawings
 6. Fees
 7. Depositories
 8. Disclosure

REFERENCES

1. <https://www.pharmatutor.org/articles/essential-elements-patent?page=1%2C2>
2. https://en.wikipedia.org/wiki/Patent_claim
3. <https://www.slideshare.net/sumittiwari101/filing-a-patent-process-in-india>
4. <https://www.legalraasta.com/blog/procedure-patent-filing-india/>
5. <http://www.ipindia.nic.in/patents.htm>

ANY QUESTIONS ???



THANK YOU 😊