
India – Patent Filing

In India, the patent filing procedure comprises four main steps.

1. Application for a patent

An application for a patent can be made by any person claiming to be the true and first inventor of the invention, assignee of the true and first inventor, or legal representative of any deceased person who, immediately prior to death, would have been entitled to make such an application. The application can be accompanied by either a provisional or complete specification.

2. Examination of the patent application

Substantial examination is an essential step in India. A request for examination can be made within 48 months of from the date of priority or from the date of filing of the application.

3. Opposition to the grant of patent

A patent application can be opposed at either pre-grant or post grant of Patent. At the pre-grant stage the opposition may be filed by any person within six months from the date of publication of the application or before the grant of patent. Post-grant opposition may only be filed by an interested person after the grant of a patent but before the expiry of a period of one year from the date of publication of the grant of a patent.

4. Grant of the patent

After an application for a patent has been found to be in order for grant of the patent, the patent is granted. The details of the grant of a patent are published by the Controller in the official journal so that the patent is open for public inspection. The term of patent protection is 20 years.

Annuities

Annual renewal fees must be paid during the life of an Indian patent. The renewal fee is payable at the expiration of the second year from date of the patent and each succeeding year. Payment must be remitted to The Patent Office before the expiration of the relevant year. The Patent Office will only entertain correspondence about annuity payments from a registered patent agent. Two or more years' renewal fees may be paid in advance if the patentee so desires. A maximum extension of six months may be obtained on payment of the prescribed penalty fees. If the renewal fee in question is not paid within the extended period, the patent will lapse.

Note: Patent Cooperation Treaty (PCT) Applications. An applicant wishing to file an international patent application must comply with the procedural formalities laid down in the PCT. A PCT or National Phase Entry application can be filed within 31 months of the convention application. This is a general summary and should not be relied upon as specific advice.

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