

Intellectual Property Rights: Registration and Protection in India

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Organized by:

**Intellectual Property Rights (IPR) Cell, Directorate of Research
Sher-e-Kashmir University of Agricultural Sciences and Technology of Jammu, Chatha**

In collaboration with

Agriculture Production and Farmers Welfare Department, Jammu and Kashmir Union Territory

Workshop

on

“Intellectual Property Rights: Registration and Protection in India”

January 4-5, 2022

Editors

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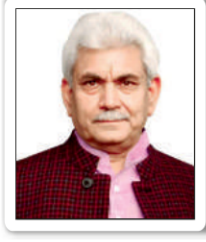
Intellectual Property Rights (IPR) Cell, Directorate of Research,
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Shri Manoj Sinha
Hon'ble Lt. Governor
UT of J&K



RAJ BHAVAN
JAMMU-180001

Message

I am delighted to know that Sher-e-Kashmir University of Agricultural Sciences & Technology of Jammu is organizing two day workshop on “Geographical Indications (GIs) of North Western Himalayas” from January 4-5, 2023. Geographical Indications indicate the goods or products originating in a particular geographical region and having unique quality and characteristics essentially attributable to that particular region. Geographical Indications can be protected under various national and international laws and conventions. This form of intellectual property has attracted increasing attention from policymakers and trade negotiators, as well as producers (mostly of agricultural products), lawyers and economists across the world.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 and Rules 2002 and 2013 have sufficient provisions for protecting such goods and products originating in India. The North Western Himalayan region due to its unique geographical location and climatic uniqueness is bestowed with bounties of nature. The Geographical Indications are one such specialties blessed to this region. They have been conserved or developed by the local communities over centuries to maintain their identity. However, in era of Intellectual Property Rights they need legal protection so that they are not commercially exploited by the people from other regions or countries. Such protections aim at getting commercial benefits, arising due to unique features of such products, by the communities of the particular Geographical regions where they have originated. Govt. of Jammu and Kashmir is concerned over GI tagging of many products and efforts are being made in this direction.

It is a matter of great satisfaction that SKUAST-Jammu has taken initiative to sensitize all stakeholders including scientists, administrators, technocrats, policy makers, farmers and local communities Jammu and Kashmir and other North Western States by organizing lectures and interfaces with experts on the subject. It will go a long way in protecting our natural wealth and using the same for benefit of the people of this geographical area.

I wish Vice-Chancellor SKUAST-Jammu and his team best of luck for success of the workshop.

Manoj Sinha
(Manoj Sinha)

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Shri A.K. Mehta
IAS



Tel. No.: 0191-2546773
0194-2506033, 2506233
Chief Secretary, J&K (UT)

Message

I am happy to learn that Sher-e-Kashmir University of Agricultural Sciences & Technology of Jammu is holding a work shop on "Geographical Indications (GIs) of North Western Himalayas" from January 4-5, 2023 for all stakeholders including scientists, administrators, technocrats, policy makers, farmers and local communities of Jammu and Kashmir and other North Western States. Protection of Geographical Indications, the real natural wealth and products (mostly of agricultural products), need legal protection by their registration with the authorities deemed competent under Geographical Indications of Goods (Registration and Protection) Act, 1999. It becomes necessary due to the fact that such products having unique features have evolved in particular Geographical Regions under specific climatic conditions; and conserved by the local communities. The commercial benefits arising due to such products must be shared by the real stakeholders. More so, when such products or commodities are registered and protected with the designated competent authorities they get GI tag which further boosts their brand value. Therefore, it is highly required that such products are registered and protected. To accelerate the process it is very important to sensitize all the stakeholders so that products originated in North Western Himalayan region get due recognition.

I congratulate Vice-Chancellor and his team for taking initiative to deliberate on such an important issue. I wish the organizers good luck for success of the workshop.

-sd-

(A.K. Mehta)



ATAL DULLOO
IAS



सत्यमेव जयते

Tel. No.: 0194-2506114
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(Additional Chief Secretary
Agriculture Production Department
J&K (UT)

Message

It gives me immense pleasure to share that Sher-e-Kashmir University of Agricultural Sciences & Technology of Jammu in collaboration with Department of Agriculture Production and Farmers Welfare, Jammu & Kashmir, is organizing two day work shop on a very important theme "Geographical Indications (GIs) of North Western Himalayas" from January 4-5, 2023. The North Western Himalayan region of India is known for its natural wealth and many area specific products and specialties. Such products which have originated in specific geographical region and known for characteristic features of commercial value can be registered as Geographical Indications (GIs) in India under Geographical Indications of Goods (Registration and Protection) Act, 1999. The GI tagging of the natural (mostly agricultural) and many traditional goods shall provide legal protection to them, thus preventing their unauthorized commercial exploitation as well as misuse of brand names. GI tagging provides a brand name to the product and increases its commercial value, thus benefitting the actual stakeholders. Jammu and Kashmir Govt. has already initiated process for registration of many products like Doda Gucchi, Baderwah Rajmash, Chikhri wood artisan products of Rajouri, etc. Many more products popular in different geographical locations in J&K or other North Western states can be identified for GI registration. For this active participation and coordination among University scientists, technocrats, policy makers, farmers and local communities is very important. It was a long felt need to sensitize all stakeholders on this aspect by providing a common platform for lectures, discussions and interfaces with experts.

Prof. J.P. Sharma, Vice-Chancellor SKUAST-Jammu and his team has taken lead to address this issue. I am quite hopeful that proceedings of the workshop shall be of immense value for all stakeholders; and it will help us enlist many potential products which can be brought under GI tagging as well as accelerate their registration process. I wish Vice-Chancellor and organizers good luck for success of the event and assure cooperation of Department of Agriculture Production and Farmers Welfare, J&K Govt.

(Atal Dulloo)



Sher-e-Kashmir University of Agricultural Sciences and Technology of Jammu



Prof. J.P. Sharma

Ph.D. IIT Delhi
Vice-Chancellor

Message

I am happy to share that Sher-e-Kashmir University of Agricultural Sciences & Technology of Jammu in collaboration with Department of Agriculture Production and Farmers Welfare, Jammu & Kashmir and SKAUST-Kashmir is organizing two day workshop on a very important theme “Geographical Indications (GIs) of North Western Himalayas” from January 4-5, 2023. North Western Himalayas have unique geographic location and climatic conditions in which many natural products as well as human innovations have evolved, which have been conserved and maintained by local communities over centuries. These products are identified by the specific geographical location and owe their typical features because of their origin and evolution in a specific environment. Such products are referred to as Geographical Indications (GIs) and can be protected in India under provisions of Geographical Indications of Goods (Registration and Protection) Act, 1999. These products are given GI tags so that they can be commercially utilized by only the actual stakeholders and they fetch premium prices in national and international markets.

The two day workshop being organized at SKUAST-Jammu aims at identification of potential GI products at very grass root level in Jammu and Kashmir as well as adjoining Himalayan States; and devising policy for their registration and protection. Another important aspect of the workshop is sanitizing all stakeholders including Scientists, Administrators, Technocrats, Policy Makers, Farmers, FPOs and local communities of Jammu and Kashmir and other North Western States/UTs through expert lectures, panel discussions and interfaces.

The Govt. of Jammu and Kashmir, under the patronage of Shri. Manoj Sinah ji, Hon'ble Lieutenant Governor and proactive coordination of Dr. Arun. K. Mehta, Chief Secretary and Sh. Atal Dulloo, Additional Chief Secretary, Department of Agriculture Production and Farmers Welfare, has taken keen interest in GI tagging of the products specific to Jammu and Kashmir. Now all the stakeholders have to actively get involved in the process so that potential GI products get recognized and traditional glory of the region get further boost at national and international levels.

I wish the team of Intellectual Property Right Cell of the University and the organizing committees good luck for the success of the event.

(J.P. Sharma)

Vice-Chancellor

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An Agricultural institution for sustainable food, nutrition and economic security



Sher-e-Kashmir University of Agricultural Sciences and Technology of Jammu



Dr. R.K. Salgotra
Nodal Officer IPR Cell &
Organizing Secretary of Workshop

Message

The Intellectual Property Right (IPR) Cell under Directorate of Research at Sher-e-Kashmir University of Agricultural Sciences & Technology of Jammu is a vibrant unit with mandate to facilitate and guide scientists, scholars, technocrats and farmers in seeking protection of different forms of intellectual properties. A team of scientists with different areas of specialization have been nominated to constitute IPR Cell of the University. The team IPR Cell, under the chairmanship of Director Research and overall patronage of Ho'nble Vice-Chancellor, has been given opportunity to organize two day workshop on "Geographical Indications (GI) of North Western Himalayas" from January 4-5, 2023 in collaboration with Department of Agriculture Production and Farmers' Welfare, Jammu & Kashmir.

The basic objective of organizing the workshop is to sensitize all the stakeholders including scientists, administrators, technocrats, policy makers, farmers and local communities of Jammu and Kashmir and other North Western States about the importance of GI potential products as well as their registration and protection under the provisions of Geographical Indications of Goods (Registration and Protection) Act, 1999. The other motive of organizing workshop is to identify GI potential products at very grass root level and enabling their GI tagging by the designated competent authorities. This would further boosts their brand value and demand in the national and international markets, thus strengthening the local economy.

To ensure that the participants of the workshop get practical knowledge about the GI products and their protection procedures, four technical sessions spanning over two days have been planned wherein experts of eminence shall be delivering lectures, holding discussions and interactions. A session for FPOs and farmers have been specially planned to listen to them and seek their feedback.

I am quite hopeful that the workshop on such an important theme shall prove useful for the stakeholders and it will accelerate the process of GI tagging of the potential products originated and evolved in North Western Himalayan region of India.

(R.K. Salgotra)

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About Intellectual Property Right Cell SKUAST-Jammu (IPRC-SKUAST-J)

With the emergence of world trade organization (WTO) agreement, intellectual property rights (IPRs) have become an important issue during the last 20-25 years. IPRs includes copy rights, patents, design registration, trademarks, registration of plant variety, geographical Indications (GIs) and trade secrets. In our country the academic institutions as well as industries have significantly contributed in the field of research and innovation. In the era of industrialization and WTO agreement, IPRs are globally enforceable and we have to develop a conducive environment by imparting knowledge of copy rights, patents, design registration, trademarks, registration of plant variety, GIs and trade secrets. Our young generation should be well equipped in the protection of IPRs in the field of their innovation and creativity. The IPR Cell established at the institution provides a basic knowledge of copy rights, design registration, trademarks, registration of plant variety, GIs and trade secrets IPR, patent concepts, and procedures of filling the patents at national and international level. The IPR Cell also advices to researchers, local innovators including faculty members, students and research scholars about the latest developments in the field of IPRs. Intellectual Property Right Cell of Sher-e-Kashmir University of Agricultural Sciences & Technology of Jammu (IPRC-SKUAST-J) was established in 2018 vide order No. AUJ/DR/18-19/F-84/3459-3527 Dated 28- 08-2018 with a vision to develop human resource in the management of Intellectual Property Rights as an integral part of the innovation process and the innovation value chain in the University. Following committee was constituted to facilitate different Divisions/Units of the University:

Sl. No.	Name with Designation	
1.	Director Research	Chairman
2.	Dr. R.K. Salgotra	Nodal Officer
3.	Dr. Sunil Kumar	Member
4.	Dr. L.M. Gupta	Member
5.	Dr. Satesh Kumar	Member
6.	Dr. A.K. Pathak	Member
7.	Dr. Dhirender Kumar	Member
8.	Dr. Akash Sharma	Member
9.	Dr. Sushmita Dadich	Member
10	Dr. Manmohan Sharma	Member Secretary

Vision of the IPRC-SKUAST-J

To become a world class centre for the creation of human resources in the field of Intellectual Property Rights (IPR) and to establish systems for seamless integration of IPR in the Knowledge Value Chain in an evolving university framework.

Mission of the IPRC-SKUAST-J

The IPRC-SKUAST-J aims to evolve into a centre of excellence in the fields related to IPR Education, innovation management integrated with IPR within an educational Framework, protection of traditional knowledge and practices for socio-economic development, and contributing to the development and implementation of IPR Policy in the regional and national context.

Intellectual Property Rights (IPR)

IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indication, layout design of integrated circuits, undisclosed information (trade secrets) and new plant varieties.

Legislation covering IPRs in India:

- **Patents:** The patents Act, 1970 as amended in 1999, 2002, 2005, 2006, 2012, 2013, 2014, 2016, 2017 and 2019
- **Designs:** the Designs Act, 2000
- **Trade Mark:** The Trademarks Act, 1999
- **Copyright:** The Copyright Act, 1957 as amended in 1983, 1984, 1992 and 1999
- **Layout Design of Integrated Circuits:** The semiconductor Integrated Circuit Layout Design Act, 2000
- **Protection of Undisclosed Information:** No exclusive legislation exists but matter would be generally covered under the contract Act, 1872
- **Geographical Indications:** The Geographical Indications of Goods (Registration and Protection) Act, 1999
- **Plant Varieties:** The Protection of Plant Variety and Farmers' Rights Act, 2001

Administration for IPRs in the Country:

Patents, designs, trademarks and geographical indication are administered by the controlled General of Patents, Designs and Trademarks which is under the control of the department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry. Copyright was under the charge of the Ministry of Human Resource Development now with DIPP. The Act on Layout-Design of Integrated Circuits was administered by the Ministry to DIPP. Protection of Plant Varieties and Farmers' Rights Authority, Ministry of Agriculture and Family Welfare administers the Act on Plant Variety.

Patent Filing Guidelines in India

1. Introduction:

A Patent is an exclusive right granted by the government to the owner of the invention for a limited period to make, use, manufacture and market the invention, provided the invention satisfy the following criteria:

- a. Novelty: not known as prior art
- b. Non- obviousness: Must involve inventiveness
- c. Usefulness: Invention must have industrial application

As per the provisions of the TRIPS agreement protection through patent should have following provisions

- Patent protection is available for inventions for at least 20 years.
- Patent protection is available for both products and processes, in almost all fields of technology
- Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality.
- Governments can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for the production of plants or animals (other than microbiological processes)
- Plant varieties, are protectable by patents or by a special system (such as the *sui generis* system of PPV & FRA-2001 for breeder's rights)

A patent shall confer on its owner the following exclusive rights:

- 1) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;
- 2) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
- 3) Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Objectives of Patent

- To encourage inventions by promoting their protection and utilization so as to contribute to the development of industries
- To enjoy the exclusive rights over the invention
- A patent is to ensure commercial returns to the inventor for the time and money spend in generating a new product.

2. Patenting procedure in India:

2.1. Background:

India was put under the contractual obligation to amend its patents act in compliance with the provisions of TRIPS. India had to meet the first set of requirements on 1-1-1995. This was to give a pipeline protection till the country

starts giving product Patent. It came to force on 26th March 1999 retrospective from 1-1-1995. It lays down the provisions for filing of application for product patent in the field of drugs or medicines with effect from 01.01.1995 and grant of Exclusive Marketing rights on those products. India amended its Patents Act again in 2002 to meet with the second set of obligations (Term of Patent etc.), which had to be effected from 1-1-2000. This amendment, which provides for 20 years term for the patent, Reversal of burden of proof etc. came into force on 20th May, 2003. The Third Amendment of the Patents Act 1970, by way of the Patents (Amendment) Ordinance 2004 came into force on 1st January, 2005 incorporating the provisions for granting product patent in all fields of Technology including chemicals, food, drugs & agrochemicals and this Ordinance is replaced by the Patents (Amendment) Act 2005 which is in force now having effect from 1-1-2005. The Government brought into force Patents Rules, 1972 w.e.f. 20.4.1972. These Rules were amended on 2.6.99 and replaced by the Patents Rules 2003 w.e.f. 20.5.2003 and further it is amended by the Patents (Amendment) Rules 2005, 2006, 2012, 2013, 2014, 2016, 2017 and 2019; this includes provisions relating to time-lines with a view to introducing flexibility and reducing processing time gradually for patent applications, and simplifying and rationalizing procedure for grant of the patent

2.2. Common Procedures and Practices:

2.2.1. Filing of Patent Application

An application for a patent for an invention may be made by any of the following persons either alone or jointly with any other person:

- True and first inventor
- True and first inventor's assignee
- Legal representative of any deceased true and first inventor or his/her assignee

2.2.2. Jurisdiction

Unlike many other countries, Indian Patent Office functions from four locations viz. Kolkata, Delhi, Chennai and Mumbai for carrying out all procedures relating to patents. An application for patent shall be filed with the Patent Office having appropriate jurisdiction.

Table 1. Territorial jurisdictions are as under:

Patent Office	Territorial Jurisdiction
Mumbai	The States of Gujarat, Maharashtra, Madhya Pradesh, Goa, Chhattisgarh, the Union Territories of Daman & Diu and Dadra & Nagar Haveli
Delhi	The States of Haryana, Himachal Pradesh, , Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, National Capital Territory of Delhi and the Union Territories of Chandigarh, Jammu and Kashmir, and Ladakh.
Chennai	The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Telangana and the Union Territories of Pondicherry and Lakshadweep.
Kolkata	Rest of India (States of Bihar, Jharkhand, Orissa, West Bengal, Sikkim, Assam, Meghalaya, Manipur, Tripura, Nagaland, Arunachal Pradesh and Union Territory of Andaman and Nicobar Islands)

2.2.3. Types of Patent Applications

- a) **Ordinary Application** i.e., an application which has been filed directly in the Indian Patent Office without claiming priority of any foreign application.
- b) **Convention Application** claiming the priority of a country which is a member to Paris Convention
- c) **PCT National Phase Application**
- d) **Divisional Application:** A further application divided out of the first-mentioned patent application.
- e) **Patent of Addition** i.e. an application for patent in respect of any improvement in or modification of the invention for which the patent application has already been filed or patent has been granted.

2.2.4. Filing of patent application

- a) Every application for a patent shall be for one invention only and shall be filed in Form-1 at an appropriate office along with provisional/complete specification (in Form 2), accompanied with the prescribed fee as given in the First Schedule.
- b) However, a provisional specification cannot be filed in case of Convention Application or PCT National Phase application filed in India.
- c) Normal fee shall be applicable for applications containing up to 30 pages and up to 10 claims. If the application exceeds 30 pages or claims are more than 10 in number, additional fee, as given in the First Schedule, is payable.
- d) It may be noted that 10% additional fee shall be payable when the application for patent and other documents are filed through physical mode, namely, in hard-copy format.

2.2.5. E-Filing of Patent Application:

IPO has developed the comprehensive e-filing system for patents, wherein, in addition to online filing of new applications, subsequent filing of all the documents has also been integrated.

New and enhanced features of Comprehensive E-filing services include:

- Web-based filing system
 - Dual way login (Digital Signature as well as Password based) and password regeneration
 - Provision for filing of all entries as per First Schedule of the Patents Rules, 2003
 - Proper validations with Patent Office database
 - Facility to upgrade/update digital signatures
- (<https://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin>)

The forms are required to be filled for filing of a patent application in India:

Some important forms are required for filing and prosecution of a patent application in India:

S.No.	Action	Form No.	Conditions
1.	Application for Grant of a patent	Form 1*	This Form will be accompanied by provisional or complete specification fill in form 2
2.	Provisional or complete Specification	Form 2*	
3.	Statement and undertaking foreign applications	Form 3*	In this form that applicant gives an undertaking that he has not made any specification outside India and informed at patent office as and when he finds that same abroad
4.	Declaration as to inventorship	Form 5	The applicant discloses the names of all the inventors. This is generally used when complete specification is filed after provisional specification
5.	Request or claim regarding mention of inventor as such in a patent	Form 8	If this form is filed then the letters patent document will have the name of the inventors, otherwise not
6.	Request for examination of a patent application	Form 18*	This form can be filed anytime within 48 months of filing an application. It can be filed even at the time of filing the patent application. Without filing this form the patent specification will not be examined
7.	Request for expedited examination of a patent application	Form 18a	This form is required when the applicant wants expedited examination of application but along with the request for early publication, if the application has not been published
8.	Form authorization of a Patent Agent	Form 26	this form is required when the applicant authorizing a patent agent to act before the patent office on his/ her behalf
9.	Request for early publication	Form 9	This form is required to be filled if the applicant wants that his application is published before 18 months of filing

Forms marked with asterisk are necessary to be deposited with the Patent Office in order to process the application for grant of a patent by the Patent Office. Rest of the forms can be filled as and when the need arises.

What time lines are to be adhered to while prosecuting a patent application in India? Following are the important timelines to be observed by the applicant during the prosecution of a patent application.

Sl. No.	Description	Time line
1.	Filing of complete specification following provisional specification (Form 2)	within 12 months of filing a provisional specification
2.	Statement and undertaking regarding foreign applications (Form 26)	within six months from the date of filing of application
3.	Declaration of inventor ship (Form 5)	within the complete specification or within one month from the date of filing of the complete specification
4.	Reference to deposit of biological material	within three months from the date of filing of application, in case of request for early publication such reference should be provided before or along with the request for early publication
5.	Withdrawal of application to prevent publication	15 months from date of filing or priority, whichever is earlier
6.	Request for examination (Form 18)	48 months from the date of filing or priority, whichever is earlier
7.	Time for replying to the First Examination Report (FER)	12 months from the date of issuance of the FER. The applicant must reply to the objections raised in this report and should put the application in order for the Grant as early as possible. Is 12 months period is non extendable
8.	Pre Grant opposition	After publication of the application and any time before the Grant of patent
9.	Notice of opposition post Grant opposition (Form 7)	One year from the date of publication of Grant of patent
10.	Time after which no permission required for filing abroad	6 weeks after filing application in India, where no direction for secrecy in present
11.	Furnishing information relating to working of patent, upon notice of controller (Form 27)	2 months from the date of notice

2.2.6. Documents required for filing patent application

A patent application should contain the following:

- Application for grant of patent in Form-1.
- A proof of right is required from the inventor(s) by way of endorsement in the appropriate paragraph of Form-1 or as an assignment from inventor(s) in favour of applicant(s), duly authenticated, irrespective of whether the

application is a Convention or National Phase application. Accordingly, it shall be filed within 6 months from the date of filing of the application in India.

- c) Provisional/complete specification in Form-2.
- d) Statement and undertaking under Section 8 (1) in Form-3 :
- e) Declaration as to inventorship shall be filed in Form-5 along with the complete specification.
- f) If an applicant is MSME/Startup, Form 28 accompanied with appropriate evidence in accordance with rule Rule 2 (fa)/ 2(fb) respectively shall be submitted. In the case of “small entity or startup”, every document for which fee has been specified, shall be accompanied by Form-28.
- g) Form of Authorisation: Authorisation of an agent shall be filed in Form 26 or in the form of a power of attorney within a period of three months from the date of filing of such application or document, failing which no action shall be taken on such application or documents for further processing till such deficiency is removed.
- h) Priority document is required in the following cases:
 - Convention Application (under Paris Convention).
 - PCT National Phase Application wherein requirements of Rule 17.1 (a or b) of regulations made under the PCT have not been fulfilled.
- i) Every application shall bear the signature of the applicant or authorized person/patent agent along with name and date in the appropriate space provided in the forms. Where the documents have been digitally signed by the Applicant/Patent Agent, there will be no requirement of physical signature of the agent or applicant.
- j) If the invention as disclosed in the patent specification uses the biological material obtained from India, the applicant is required to submit the permission from the National Biodiversity Authority any time before the grant of the patent. (Please refer to Section-6 of the Biological Diversity Act, 2002).
- k) The application shall disclose in the specification the source and geographical origin of the biological material, if any used in the invention.

2.2.7. Comprehensive E-filing:

- a) E-filing Portal of the Patent Office, available in the official website of Controller General of Patents, Designs & Trade Marks (www.ipindia.nic.in), provides comprehensive platform for online submission of patent application and subsequent forms in a secure and authenticated electronic way.
- b) Authentication of filing is done via a digital signature which the applicant or his agent must procure as Digital Signature Certificate (DSC) of class II or III from authorized vendors.
- c) Online payment of fees can be made through a payment gateway with all the prevalent major modes of payment like Net banking, Credit Cards, Debit Cards and Unified Payments Interface (UPI).
- d) The e-filing portal provides flexibility to applicants or their authorized agents to work from their premises on 24x7 basis, even on holidays.

2.2.7.1. Steps of e-filing:

- Visit www.ipindia.gov.in and proceed to E-Gateways
- Register for New User and creation of —user-idl
- Install Digital Signature Certificate (DSC) and configure the system as per the DSC manual
- Login to the e-filing module
- Select New Application Filing or any particular Form which is to be filed
- Draft the Form(s) for new application or any other subsequent form (s)
- Upload the PDF version of required documents
- Save the draft
- Go to the drafted forms
- Enter the mobile number, if SMS alert are required
- Select the drafted form and proceed for signing of drafted form
- After the forms are digitally signed, it is ready for making the payment through the available Payment Gateways
- Select the digitally signed form and proceed for payment
- Select the payment gateway (NTRP-Bharatkosh payment gateway)
- Select the bank and payment mode to make the payment of fee
- After making payment, the acknowledgement receipt would be generated. (For more and updated information on the steps for e-filing, refer to the Comprehensive E- Filing Portal).

2.2.8. Receiving Documents in office:

- a) The application and any other documents with or without accompanying fees is received at the Patent Office at separate counters i.e., Fee Counter and Non-Fee Counter , respectively.
- b) The fee bearing documents are sent to the fee counter and the non-fee bearing documents are sent to the non-fee counter.
- c) The application and any other documents with or without accompanying fees is received at the Patent Office at separate counters i.e., Fee Counter and Non-Fee Counter , respectively.
- d) The fee bearing documents are sent to the fee counter and the non-fee bearing documents are sent to the non-fee counter.
- e) The staff at the fee counter makes relevant entries in the module, stamps the documents so received, generates the Cash Book Receipts (CBRs) and enters the CBR number, date, amount of fee received, application number, patent number or other relevant entries.
- f) The staff at the non-fee counter makes relevant entry in the document receipt module and stamps the documents
- g) The documents from both the counters are sent to Electronic Data Processing (EDP) Section for digitization

2.2.9. Sequence listing

If the application for patent discloses sequence listing of nucleotides or amino acid sequences, such sequence listing shall be filed in the computer readable text format along with the application and no print form of the sequence listing of nucleotides or amino acid sequences will be required to be given. A nucleotide sequence shall be listed with a maximum of 60 bases per line, with a space between each group of 10 bases. Any sequence listing in the electronic document format as specified shall preferably be created by dedicated software such as PatentIn.

2.2.10. Fee:

- a) Fee payable under the Act in case of offline filing may either be paid in cash or may be sent by bank draft or banker's cheque payable to the Controller of Patents and drawn on a scheduled bank at the place where the appropriate office is situated. Fee can also be paid through BHIM app in Controller of Patents Account.
- b) If the draft or banker's cheque is sent by post, the fee shall be deemed to have been paid on the date on which the draft or banker's cheque has actually reached the Controller.
- c) Ten percent additional fee shall be payable when the application for patent and other documents are filed through physical mode, namely, in hard copy format.
- d) In case of online filing, payment of fees can be made through a payment gateway with all the prevalent major modes of payment like Net banking, Credit Cards, Debit Cards or ATM Cards.
- e) When a small entity/start up is an applicant, every subsequent document for which a fee has been specified, shall be accompanied by Form 28 with duly authenticated copy of the evidence of small entity/start up.
- f) In case an application processed by a natural person is fully or partially transferred to a person other than a natural person, the difference, if any, in the scale of fee(s) between the fee(s) charged from a natural person and the fee(s) chargeable from the person other than a natural person in the same matter for all previous proceedings shall be paid by the new applicant with the request for transfer in Form 6 along with Form 30.
- g) When an application processed by a small entity is fully or partly transferred to a person other than a natural person (except a small entity), the difference, if any, in the scale of fee(s) between the fee(s) charged from a small entity and the fee(s) chargeable from the person other than a natural person (except a small entity) in the same matter for all previous proceedings shall be paid by the new applicant with the request for transfer in Form 6 along with Form 30.
- h) When an application is filed by a startup is fully or partly transferred to any person other than a natural person or a startup, the difference, if any, in the scale of fees between the fees charged from a startup and such person to whom the application is transferred, shall be paid by the new applicant for all previous proceedings along with the request for transfer in Form 6 along with Form 30.
- i) Where a fee is payable in respect of a document, the entire fee shall accompany the document.

- j) Where a fee is payable in respect of the doing of an act by the Controller, the Controller shall not do that act until the fee has been paid.
- k) Fee once paid in respect of any proceedings shall not be ordinarily refunded whether the proceedings have taken place or not. However, on the request by the applicant/agent in Form 30 and if the Controller is satisfied that during the online filing process, the fee was paid more than once for the same proceeding, the excess fee shall be refunded.
- l) Prescribed fee for various proceedings under the Act is given in the First Schedule.

The cost of filing a patent application in India:

S. No.	Action	Limits, conditions and timelines	Official fees for e-filing in rupees			Official fees for physical filing in rupees		
			For natural persons/startups	For small entity	For others except small entity	For natural persons (s)/startups	For small entity	For other small entity
1	Filing of patent Application along with complete/provisional specification	Up to 30 pages and up to 10 claims	1600	4000	8000	1750	4400	8800
		For each additional sheet	160	400	800	1806	440	800
		For each additional claim	320	800	1600	350	880	1760
		For each page of sequence listing of nucleotide or amino acid	160 subject to a maximum of 24000	400 subject to a maximum of 60000	800 subject to a maximum of 120000	Not allowed	Not allowed	Not allowed
2	Request for examination of patent		4000	10000	20000	4400	11000	22000
		Request for expedited examination of application	8000	25000	60000	Not allowed	Not allowed	Not allowed
3	Request for early publication		2500	6250	12500	2750	6900	13750

4	Renewal fee (every year)	2 nd to 6 th year	800	2000	4000	880	2200	4400
		7 th to 10 th year	2400	6000	12000	2640	6600	13200
		11 th to 15 th year	4800	12000	24000	5280	13200	26400
		16 th to 20 th year	8000	20000	40000	8800	22000	44000

The office in India in relation to PCT applications?

A PCT application can be filed in any of the Branch Offices of the patent Office located at New Delhi, Chennai, Mumbai and Kolkata (Head office). Any of these offices shall function as a receiving office, designated office and elected office for the purpose of international applications filed under the Treaty. An international application shall be filed in the Patent Office which would process the application in accordance with these rules and the provisions under the PCT.

The cost of filing PCT application:

The cost of filing PCT application by an Indian Applicant is as follows:

1.	Transmittal Fees	Rs.8,800/- for small entity and Rs. 3250/- for individuals and Rs. 17,600/- for others.
2.	International Filing Fee	US\$ 1,471
3.	Fee per sheet over 30 sheets	US\$ 17
4.	Search Fee	US\$ 314 to US\$ 2,443 depending on the International Searching Authority (ISA) selected by the applicant

All fees payable are reduced by 90% for the application filed by any individual as an applicant who reside in a PCT contracting state where the Capital National income is below US\$ 3000.

The fee payable:

All types of fees are payable at the receiving office and it is responsibility of the receiving office to remit the search fees to the concerned office if the receiving office is not the search authority. Similarly, all other charges due to other agencies would be remitted in the receiving office. The fees are payable in the currency acceptable to the receiving office. As an Indian you pay all the fees in Indian rupees.

2.2.10. Processing of Application

2.2.10.1. Initial processing:

- On receipt of an application, the Office accords a date and serial number to it. Requests for examination are accorded separate serial numbers.
- Applications and other documents filed in physical form are digitized, verified, screened, classified and uploaded to the internal server of the Office.
- Patent applications and other documents are arranged in e-wrapper.
- The Application is screened for:

- International Patent Classification
- Technical field of invention for allocation to an examiner in the respective field
- Relevance to defence or atomic energy.
- Correctness and completeness of abstract.

2.2.10.2. Scrutiny of Application

- a) The Office checks whether the Application has been filed in **Appropriate Jurisdiction** (see **03.02**). The address for service shall mandatorily include e-mail address and PIN code. If the address for service is not complete, the application shall be returned and the applicant will be informed accordingly.
- b) The Office checks for **Proof of Right** to file the application (See **03.04**). If proof of right is not filed along with the application, the same shall be filed within a period of six months from the date of filing of the application.
- c) Further, the Office checks whether:
 - the documents have been prepared on a proper sized paper and typed in appropriate font with proper spacing,
 - the documents are duly signed
 - abstract, drawings (if any) have been filed in proper format
 - meaningful claim(s) are present in a complete specification
 - whether authorisation of an Agent in Form 26 or in the form of a power of attorney is filed within a period of three months from the date of filing of such application or document.
 - whether Form-5 has been filed, if required.
 - whether the invention has been assigned to another person, and if yes, whether Form 6 has been duly filed along with the deed of assignment. If the right is assigned from an individual to a legal entity, the legal entity is invited to pay the balance fees.

2.2.11. Inventions relating to Atomic Energy

No Patent is granted in respect of an invention relating to atomic energy falling within sub-section (1) of Section 20 of the Atomic Energy Act, 1962.

2.2.12. Withdrawal of patent application

The applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in writing. A request for withdrawing the application under sub-section (4) of section 11B shall be made in Form 29. However, if the applicant makes a request for withdrawal within 15 months from the date of filing or priority of the application, whichever is earlier, the application will not be published.

2.2.13. Withdrawal and Refund of Fees

If request for withdrawal of an application is filed in respect of which a request for examination has been filed but FER has not been issued, 90% of the fee paid for request for examination/expedited examination can be refunded as prescribed in the First Schedule, on a request made by the applicant in Form 29.

2.2.14. Publication of Patent Application

- a) An application for Patent is not open to public before the expiry of 18 months from the date of filing or date of priority, whichever is earlier.
- b) At the end of the period as mentioned in para (a) above, the Application is published in the Official Journal
- c) The Patent Office publishes applications in the official e-Journal, ordinarily within one month from the date of expiry of the period as specified in para (a) above.
- d) The Patent Office Journal is published on every Friday.
- e) Where a secrecy direction has been given, then the application will be published after the expiry of the period as mentioned in para (a) above or when the secrecy direction has ceased to operate, whichever is later.

2.2.15. Early Publication

- a) A request for early publication may be made in Form-9 with the prescribed fee.
- b) Such a request will be considered only if the Complete Specification has been filed in the instant case.
- c) Further, a patent application shall not be considered for early publication if an invention pertains to subject matter relevant for defence purpose.
- d) The application is published within one month from the date of such request.

2.2.16. Provisional and Complete Specification

A specification may be filed either as a provisional or complete specification. Provisional or Complete Specification shall be submitted in Form-2 along with the Application Form-1 and other documents accompanied with the prescribed fee as given in the First Schedule.

2.2.16.1. Provisional Specifications:

- a) When the applicant finds that his invention has reached a stage where it can be disclosed but has not attained the final stage, he may prepare a disclosure of the invention in the form of a written description and submit it to Patent Office as a Provisional Specification.
- b) A Provisional Specification secures a priority date for the application.
- c) An application filed with provisional specification is deemed to be abandoned if no complete specification is filed within twelve months from the date of filing of the provisional specification

2.2.16.2. Complete Specification

- a) Complete Specification is a techno-legal document which fully and particularly describes the invention and discloses the best method of performing the invention.
- b) As a complete specification is an important document in the patent proceedings, it is advised that it should be drafted with utmost care without any ambiguity.
- c) It is mandatory on the part of applicant to disclose fully and particularly various features constituting the invention. Disclosure of invention in a

complete specification must be such that a person of average skill and average knowledge in India should be able to perform the invention based on what is disclosed in the specification.

2.2.17. Filing amendments to the specification:

- a) When amendments are made to a provisional or complete specification or any drawing accompanying it, the pages incorporating such amendments shall be retyped and submitted to form a continuous document.
- b) When a retyped page or pages incorporating amendments are submitted, the corresponding earlier page(s) shall be deemed to have been superseded and cancelled by the applicant.

2.2.18. Title of invention

- a) The title should be sufficiently indicative of the subject matter of the invention and shall disclose the specific features of the invention.
- b) It need not be the same as the preamble of the main claim.
- c) It shall be brief, free from fancy expressions or ambiguity and as precise and definite as possible, but it need not go into the details of the invention itself. Title should not ordinarily exceed fifteen words.

2.2.19. Field of invention and use of invention

- a) The description should preferably begin with a general statement of the invention so as to indicate briefly the subject matter to which the invention relates, e.g. —This invention relates to
- b) Thereafter, the advantages of the invention may be mentioned to bring out clearly the areas of application and preferable use of the invention. The applicant may substantiate industrial applicability of the invention in this part.

2.2.20. Prior art and Problem to be solved

This part should generally indicate the status of technology in the field of invention with reference to developments in the field including patents and pending patent applications in the specific art. When the invention relates to improvement over the existing product or process, a short statement of the closest prior art known to the applicant in that respect shall also be given. However, the description should fully and particularly describe the invention by clearly distinguishing it from such closest prior art, known to the applicant.

2.2.21. Objects of invention

The purpose of this part is to clearly bring out the objectives to be achieved by the invention. It shall clearly mention the technical problems associated with the existing technology and the solution for that, bringing out the differences between the claimed invention and the prior art. The solution sought by the invention should be clearly brought out as object(s) of inventions with statements like,

- The principal object of this invention is ,
- Another object of this invention is ,
- A further object of this invention is etc.

2.2.22. Summary of invention

The description should include a summary of invention before giving details of the invention and the method of performing it. The statement should clearly set forth the distinguishing features of the invention for which protection is desired. This part is intended to declare different aspects of the invention.

2.2.23. Brief Description of Drawings, if any

2.2.24. Detailed Description of invention

- a) Description of an invention is required to be furnished in sufficient detail so as to give a complete picture of the invention and follows the Summary of invention. The nature of improvements or modifications effected with respect to the prior art should be clearly and sufficiently described. It may include examples/drawings or both for clearly describing and ascertaining the nature of invention. Examples must be included in the description, especially in the case of chemical related inventions.
- b) Disclosure of invention in a complete specification must be such that a person of average skill and average knowledge in India and should be able to perform the invention based on what is disclosed in the specification
- c) In case a biological material described in the specification is not available to the public and cannot be described adequately as per the provisions of the Act, such material shall be deposited with the International Depository Authority under the Budapest Treaty, on or before the date of filing.

2.2.25. Drawings

- a) Drawings or sketches, which require a special illustration of the invention, shall not appear in the description itself. Such drawings shall be on separate sheet(s).
- b) Drawings shall be on a scale sufficiently large to show the inventions clearly and dimensions shall not be marked on the drawings
- c) No descriptive matter shall appear on the drawings except in the flow diagrams.

2.2.26. Abstract

- a) Every complete specification shall be accompanied by an abstract to provide technical information on the invention. The abstract shall commence with the title of the invention.
- b) The abstract shall be so drafted that it constitutes an efficient instrument for the purpose of searching in the particular technical field.

2.2.27. Best Method

The Act specifically requires that the complete specification must describe the best method of performing the invention known to the applicant, including the one, which he may have acquired during the period of provisional protection prior to the date of filing the complete specification.

2.2.28. Claims

Claims define the contours of rights, if and when a patent is granted for an invention. Hence, claims are the most critical part of a patent application. In a complete specification the description is followed by claims. Since, claims of the

invention define the scope of legal protection, it should be drafted carefully to cover all the aspects of the invention for which protection being sought; at the same time adequately distinguishing the prior art from the claimed invention.

2.2.29. Patent of Addition

- a) When an applicant comes up with an improvement in or modification of the invention described or disclosed in the main application for which he has already applied for or has obtained a patent, the applicant may make an application for patent of addition.
- b) An application for a Patent of Addition shall be filed on the same or subsequent date of filing of the application for main Patent.
- c) A Patent of Addition shall be granted only after the grant of the main patent.
- d) When a patentee holds two patents, it is possible to convert one of the independent patents to a patent of addition of the other, if the subject matter was an improvement in or modification to the other patented invention.
- e) There is no need to pay separate renewal fee for the Patent of addition during the term of the main patent.
- f) A patent of addition expires along with the main patent. However, if the main patent is revoked, the patent of addition may be converted into an independent patent, if so requested by the patentee and the renewal fee for the remaining term of the patent need to be paid accordingly.
- g) Date of filing shall be the date on which the application for patent of addition has been filed.

2.3. Examination and Grant of Patent

2.3.1. Examination of Patent Application:

- a) An Application for a Patent shall not be examined unless the applicant or any other person interested makes a request for examination. The request is to be filed in Form 18 or Form 18A (as the case may be) along with the fee as prescribed in First Schedule.
- b) A request for examination has to be made within forty- eight months from the date of priority of the application or from the date of filing of the application, whichever is earlier. If no such request for examination is filed within the prescribed time limit, the application shall be treated as withdrawn by the applicant.
- c) The Patent Office shall not commence processing of an application filed corresponding to international application designating India before the expiration of the thirty one months from the priority date. However, the Patent Office may, on the express request filed in Form 18 along with the fee specified in First Schedule, process or examine the application at any time before thirty one months.
- d) The Office will not examine an application unless it is published and a request for examination is filed.
- e) When a request for examination is filed by a person interested other than the applicant, the Examination Report is sent to the applicant only, and intimation is given to the person interested.

2.3.2. Reference for Examination

- a) Once a request for examination is received, and the application is published under section 11A, the application is taken up for Examination in the chronological order of filing of request for examination
- b) Accordingly, the Controller shall refer the application, specification and other documents related thereto to the examiner and such reference shall be made in the order in which the request is filed.
- c) Provided that in case of a further application filed under section 16, the order of reference of such further application shall be the same as that of the first mentioned application.
- d) Provided further that in case the first mentioned application has already been referred for examination, the further application shall have to be accompanied by a request for examination, and such further application shall be published within one month and be referred to the examiner within one month from the date of such publication.
- e) The patent application is referred to an Examiner by the Controller for conducting the formal as well as substantive examination as per the subject matter of the invention vis-à-vis the area of specialization of the Examiner. At present, the Patent Office has four examination groups based on the broad area of specialization viz.:
 - i. Chemistry and allied subjects.
 - ii. Biotechnology, Microbiology and allied subjects.
 - iii. Electrical, Electronics & related Subject
 - iv. Mechanical and other subjects.
- f) The reference to the Examiner is made ordinarily within one month from the date of publication or one month from the date of request for examination, whichever is later, and is made in order in which the request is filed.
- g) When an application is referred by the Controller, the Examiner makes a report on the patentability as well as other matters ordinarily within one month but not exceeding three months from the date of such reference.
- h) The period within which the Controller shall dispose of the report of the Examiner shall ordinarily one month from the date of the receipt of the report by the Controller.
- i) A first statement of objections, along with any documents as may be required, shall be issued by the Controller to the applicant or his authorised agent within one month from the date of disposal of the report of examiner by the Controller:
- j) Provided that where the request for examination was filed by a person interested, only an intimation of such examination may be sent to such person interested.

2.3.3. Search for Anticipation by previous publication and Prior Claiming:

- a) The examiner conducts a search in the Indian Patent Database, starting from 1.1.1912, and all the available databases including patent/non patent literature. In addition to the above, PCT Minimum documentation is searched.

- b) The search is conducted to find out any publication which may anticipate the claimed subject matter.
- c) Another objective of the search is to ascertain whether an invention as claimed in any of the claims of the complete specification has been claimed in any claim of any other complete specification, filed in India, which has been published on or after the date of filing of the applicants complete specification being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.
- d) The search is conducted with respect to the date of filing of complete specification.
- e) The examiner ascertains the following:
 - i. International Patent classification.
 - ii. Search strategy.
 - iii. Keyword(s) used.
 - iv. Databases consulted for both Patent and non-Patent literature.
 - v. Prior art findings and analysis regarding the patentability.
 - vi. Limitation on search if any, such as non-clarity of claims or multiplicity of inventions or any other reason due to which a reasonable search cannot be conducted.

2.3.4. Sufficiency of Disclosure

Sufficiency of disclosure is yet another aspect, which is checked by the Examiner while examining a patent application. The Examiner will look for whether:

- a) the specification is properly titled.
- b) the subject matter is fully and particularly described in the specification.
- c) the claims define the scope of the invention properly.
- d) the Specification describes the best method of performing the invention or not.
- e) the source and geographical origin of the same has been disclosed in the specification if the invention is related to biological material and/or the biological material is used in the invention,.
- f) approval obtained from National Biodiversity Authority, (NBA) wherever applicable.
- g) if the applicant mentions a biological material in the specification which may not be described and if such material is not available to the public, the application shall be completed by depositing the material to international depository authority under the Budapest treaty.
- h) Accession Number and date of deposition of the material in the depository institution along with name and address of the depository authority shall be given, if applicable.

2.3.5. Novelty

- a) An invention is considered as new (novel), if it is not anticipated by prior publication in patent and non-patent literature, i.e., an invention is novel if it has not been disclosed in the prior art, where the prior art means everything

- that has been published, presented or otherwise disclosed to the public before the date of filing/priority date of complete specification.
- b) An invention is considered as novel, if it has not been anticipated by prior use or prior public knowledge in India.
 - c) While ascertaining novelty, the Examiner takes into consideration, inter alia, the following documents:
 - i. which have been published before the date of filing of the application in any of the specifications filed in pursuance of application for patent in India on or after 1st January, 1912.
 - ii. such Indian Patent Applications which have been filed before the date of filing of complete specification and published on or after the date of filing of the complete specification, but claims the same subject matter.
 - d) The examiner shall make such investigation for purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in section 13(1) before date of filing of the applicant's complete specification.
 - e) A prior art is considered as anticipating novelty if all the features of the invention under examination are present in the cited prior art document.
 - f) The prior art should disclose the invention either in explicit or implicit manner. Mosaicing of prior art documents is not allowed in determination of novelty.
 - g) A generic disclosure in the prior art may not necessarily take away the novelty of a specific disclosure. For instance, a metal spring may not take away the novelty of a copper spring.
 - h) A specific disclosure in the prior art takes away the novelty of a generic disclosure. For instance, a copper spring takes away the novelty of a metal spring.
 - i) In a case where a prior art is cited as an anticipation in the Examination Report, the onus of proving that the same is not to be an anticipation by reason of Section 29-34, lies on the applicant.

2.3.6. Inventive step

- a) Inventive step is a feature of an invention that involves technical advance compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.
- b) While determining patentability of the invention, an Examiner first conducts investigation as to whether the novelty of the claimed invention is established and then proceeds to conduct examination on whether the claimed invention involves the inventive step.
- c) If the invention is predictable based on the available prior art, merely requiring workshop improvement by a person skilled in the art, the inventive step is lacking.
- d) The —obviousness must be strictly and objectively judged. While determining inventive step, it is important to look at the invention as a whole.

- e) The following points need to be objectively judged to ascertain whether, looking at the invention as a whole, the invention does have inventive step or not:
- i. Identify the "person skilled in the art", i.e. competent craftsman or engineer as distinguished from a mere artisan;
 - ii. Identify the relevant common general knowledge of that person at the priority date;
 - iii. Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;
 - iv. Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed;
 - v. Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of inventive ingenuity?

2.3.6. Industrial Applicability

- a) In order for an invention to be patentable, an invention must be capable of industrial application. Industrial Application in relation to patentability means that the invention is capable of being made or used in an industry.
- b) The Examiner shall assess if the claimed invention is capable of use in any industry or made using an industrial process.

2.3.7. Inventions not patentable

Under the Patents Act, 1970, the following are not inventions and hence are not considered to be patentable. However, examples given are mere illustrations and may not be conclusive on the subject. Objective decisions may be taken on case to case basis.

- a) An invention which is frivolous or which claims anything obviously contrary to well established laws is not an invention.
- b) An invention, the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment is not an invention.
- c) The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature is not an invention.
- d) The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant is not an invention.

- e) A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance is not an invention.
- f) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way is not an invention.
- g) A method of agriculture or horticulture is not an invention: Matters excluded from patentability under this provision are:
 - i. A method of producing a plant, even if it involved modification of the conditions under which natural phenomena would pursue their inevitable course (for instance a green-house).
 - ii. A method of producing improved soil from the soil with nematodes by treating the soil with a preparation containing specified phosphorothioates.
 - iii. A method of producing mushrooms.
 - iv. A method for cultivation of algae.
 - v. A method for removal of weeds.
- h) Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products is not an invention

This provision excludes the following from patentability:

- i. Medicinal methods: for example a process of administering medicines orally, or through injectables, or topically or through a dermal patch.
- ii. Surgical methods: for example a suture-free incision for cataract removal.
- iii. Curative methods: for example a method of cleaning plaque from teeth.
- iv. Prophylactic methods: for example a method of vaccination.
- v. Diagnostic methods: Diagnosis is the identification of the nature of a medical illness, usually by investigating its history and symptoms and by applying tests. Determination of the general physical state of an individual (e.g. a fitness test) is considered to be diagnostic.
- vi. Therapeutic methods: The term 'therapy' includes prevention as well as treatment or cure of disease. Therefore, the process relating to therapy may be considered as a method of treatment and as such not patentable.
- vii. Any method of treatment of animal to render them free of disease or to increase their economic value or that of their products. As for example, a method of treating sheep for increasing wool yield or a method of artificially inducing the body mass of poultry.
- viii. Further examples of subject matter excluded under this provision are: any operation on the body, which requires the skill and knowledge of a surgeon and includes treatments such as cosmetic treatment, the termination of pregnancy, castration, sterilization, artificial insemination, embryo transplants, treatments for experimental and research purposes and the removal of organs, skin or bone marrow from a living donor, any therapy or diagnosis practiced on the human or animal body and further includes methods of abortion, induction of labour, control of estrus or menstrual regulation.

- ix. Application of substances to the body for purely cosmetic purposes is not therapy.
- x. Patent may however be obtained for surgical, therapeutic or diagnostic instrument or apparatus.
- xi. Also the manufacture of prostheses or artificial limbs and taking measurements thereof on the human body are patentable.
- i) Plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals are not inventions.
The subject matters excluded under this provision are:
 - i. plants in whole or in part
 - ii. animals in whole or in part
 - iii. seeds
 - iv. varieties and species of plants and animals
 - v. essentially biological process(es) for production or propagation of plants and animals.
- j) Microorganisms, other than the ones discovered from the nature, may be patentable. For instance, genetically modified microorganisms may be patentable subject to other requirements of Patentability. Plant varieties are provided protection in India under the provisions of the _Protection of Plant Varieties and Farmers' Rights Act, 2002
- k) A mathematical or business method or a computer programme per se or algorithms are not inventions and hence not patentable: Under this provision, mathematical methods, business methods, computer programmes per se and algorithms are not considered as patentable subject matter. For the purpose of this clause, refer the Revised Guidelines for Examination of Computer-related Inventions (CRIs), 2017
- l) A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions is not an invention.
- m) Writings, music, works of fine arts, paintings, sculptures, computer programmes, electronic databases, pamphlets, lectures, drawings, architecture, engravings, lithography, photographic works, applied art, illustrations, maps, plans, sketches, topography, translations, adaptations, etc. are not patentable. Such works fall within the domain of the Copyright Act, 1957.
- n) A mere scheme or rule or method of performing mental act or method of playing game is not an invention. For example,
 - i. Method of playing chess.
 - ii. Method of teaching.
 - iii. Method of learning.
- o) A presentation of information is not an invention.
- p) Topography of integrated circuits is not an invention.
- q) An invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components is not an invention.

2.3.8. Report of Examiner

- a) The examiner makes a report after carrying out detailed examination with respect to the following matters:
 - i. whether the application and the specification and other documents relating thereto are in accordance with the requirements of the Act and rules made thereunder;
 - ii. whether there is any lawful ground of objection to the grant of patent under the Act;
 - iii. the result of investigations under Section 13;
 - iv. any other matter which may be prescribed.
- b) The examiner prepares the report after conducting a prior art search to ascertain the novelty, and examining as to whether the invention disclosed in the specification is inventive and industrially applicable.

The Examiner also examines whether the invention belongs to one of the categories of non-patentable inventions coming under Section 3 and 4, and whether the application is in conformity with all the provisions of the Act.

2.3.9. Consideration of Report by Controller and issuance of First statement of objection/ First Examination Report (FER)

- a) The Controller considers the report of the examiner ordinarily within one month from the date of the receipt of such report and a gist of objections, if any, is sent to the applicant in the form of a report-First Examination Report (FER)-along with the application and specification, if required. If there is no objection to the grant of patent and no pre-grant opposition under Section 25 (1) is pending, the patent is granted at the earliest.
- b) The FER is sent to the applicant, even when the request for examination has been filed by a person interested. An intimation regarding the issue of FER is given to such person interested.
- c) First Examination Report (FER) may contain office objections relating to:
 - i) Lack of novelty, inventive step and industrial applicability.
 - ii) Subject matter relating to a category, which falls within the purview of Sections 3 and 4.
 - iii) Non-fulfillment of any other requirement under the Act & Rules.
- d) The applicant is required to comply with all the requirements imposed upon him by the Act as communicated through FER. However, if applicant fails to respond to the FER within six months from the date of issuance of FER or within an extended period of 3 months, the application is deemed to have been abandoned under Section 21(1) of the Act. A communication to that effect is sent to the applicant for information.
- e) The period of 6 months is extendable only once for a maximum period of three months, if requested in Form 4 within the prescribed period of 6 months, along with fees.
- f) When the applicant re-files the documents within stipulated time, the application is examined in a fresh manner by the examiner, whereupon the examiner sends the report to the Controller with his observations. If it is found

that the requirements of the Act and Rules have been met, the Controller grants a patent.

- g) If the response/amendment(s) filed by the applicant do not satisfy the requirements laid down by the Act or if the applicant contests any of the objections communicated by the Controller to him, the Controller shall offer an opportunity of hearing and decide the case on merits.
- h) Hearing may also be held through video-conferencing or audio-visual communication devices. Such hearing shall be deemed to have taken place at the appropriate office.

Explanation— For the purposes of this rule, the expression communication device shall have the same meaning as assigned to it in clause (ha) of subsection (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

- i) In all cases of hearing, written submissions and the relevant documents, if any, shall be filed by the applicant within fifteen days from the date of hearing. After hearing the applicant, the Controller may specify or permit such amendment as he thinks fit and grant the patent.
- j) If the requirements of the Act and Rules are not complied with, the application is refused by the controller under Section 15 of the Act. A decision by the Controller for refusal of patent shall be a speaking order.
- k) No patent is refused without giving an opportunity of being heard under Section 14 of the Act.
- l) An order of Controller for refusal of patent under Section 15 is appealable before the Intellectual Property Appellate Board.

2.4. Pre-Grant Opposition

- a) Any person may file an opposition by way of representation (Pre-Grant Opposition) to the Controller in Form 7A against the grant of Patent, at the appropriate office, at any time after publication of patent application u/s 11A but before the grant of Patent on any of the grounds mentioned in Section 25(1) with a copy to the applicant.
- b) The date of grant of Patent is the date on which the Controller orders the grant of patent in the file. For the purposes of Section 43(1) of the Patent Act, patent is 'granted' on the date on which the Controller passes a final order to that effect on the file.
- c) If any pre-grant opposition is received after the grant of the patent, the Controller shall return the pre-grant opposition to the opponent and shall intimate such opponent about the fact of grant of the patent. If the opponent is a person interested, he may file a formal post grant opposition.
- d) A patent is not granted before the expiry of six months from the date of publication under Section 11A. Therefore, a person may file a pre-grant opposition within the assured period of six months from the date of Publication, to make sure that the pre-grant opposition is filed before the grant of patent.
- e) The representation shall include a statement and evidence, if any, in support of such representation and a request for hearing, if so desired.

- f) The Controller shall consider the representation only after a Request for Examination for that Application has been filed.
- g) Any pre-grant opposition, if available on record, is considered by the Controller along with the report of the Examiner.
- h) On consideration of the representation, if the Controller is of the opinion that pre-grant opposition has merit and the application shall be refused or amended, a notice is given to the applicant.
- i) The applicant shall, if he so desires, reply to the notice to the Controller by filing his statement and evidence, if any, in support of his application within three months from the date of the notice, with a copy to the opponent.
- j) On consideration of the statement and evidence filed by the applicant, the representation including the statement and evidence filed by the opponent, submissions made by the parties, and after hearing the parties, if so requested, the Controller may either reject the representation or require the complete specification and other documents to be amended to his satisfaction before the patent is granted or refuse to grant a patent on the application, by passing a speaking order under Section 15, to simultaneously decide on the application and the representation, ordinarily within one month from the completion of above proceedings.

2.5. Grant of Patent

2.5.1. Compliance of conditions under the Act

A Patent is granted as expeditiously as possible when,

- i. the application has not been refused by the Controller by virtue of any power vested in him by this Act or Rules; or
- ii. the application has not been found to be in contravention of any of the provisions of the Act or Rules;

The date of grant of patent is the date on which the patent is granted by the Controller. The date on which the patent is granted shall be entered in the register. The fact that the patent has been granted is published in the official journal of the Patent Office.

As the Patent Office has moved to electronic processing, the fact of grant of patent by the Controller, Patent Number is reflected on the official website on real time basis. The patent certificate is also made available in the website.

2.5.2. Consequences of grant

- a) On the grant of patent, every patent is allotted a serial number by the electronic system. A Certificate of Patent is generated in the prescribed format and an entry in the e-register is made simultaneously. In the present electronic system, the date of recordal of Patent in the Register of Patents is the same as the date of grant of Patent by the Controller.
- b) The complete specification as granted is made available to public through official website.
- c) The application, specification and other related documents are open for public inspection on payment of prescribed fee.

- d) On grant of patent, the patentee is required to pay the accumulated fee within 3 months from the date of recordal of patent in the Register of Patents, which is now the same as the date of grant of patent. The said period is extendable by six months, provided the request is made before the expiry of extendable period.
- e) Post-grant opposition can be filed under section 25(2) by any person interested, within one year from the date of publication of grant.
- f) Every patentee and licensee has to furnish a statement regarding working of the patented invention on commercial scale in India at regular intervals (not less than six months) in the prescribed format.

2.5.3. Date of Patent

The date of Patent is the date of filing of the Application. However, in case of a PCT National Phase application, the date of patent is the date of filing of the PCT international application.

2.5.4. Conditions subject to which Patent is granted

- a) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the government for the purpose merely of its own use;
- b) any process in respect of which the patent is granted may be used by or on behalf of the government for the purpose merely of its own use;
- c) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and
- d) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the government or any other dispensary, hospital or medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

2.5.5 Rights of Patentee

- a) In case of a patented product, the patentee shall have the exclusive right to prevent third parties from the act of making, using, offering for sale, selling or importing for those purposes that product in India.
- b) In case of a patented process, the patentee shall have the exclusive right to prevent third parties from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India

2.5.6. Rights of co-owners

- a) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.
- b) Subject to the provisions contained in this section and in Section 51, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to the rights conferred by Section 48 for his own benefit without accounting to the other person or persons.
- c) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as grantee or proprietor of a patent, then, a license under the patent shall not be granted and a share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.
- d) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent, the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.
- e) Subject to the provisions contained in this section, the rules of law applicable to ownership and devolution of movable property generally, shall apply in relation to patents, and nothing contained in sub-section (1) or sub-section (2) of section 50 shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.
- f) Nothing under section 50 shall affect the rights of the assignees of partial interest in a patent created before commencement of this Act.

2.5.7. Term of Patent

The term of Patent is 20 years from the date of filing of application in respect of all the patents, including those for which the term had not expired on 20th May, 2003, when the Patent (Amendment) Act, 2002 came into force, provided that the renewal fee is paid every year before the due date or within the extended period (maximum six months).

2.5.8. Post-grant Opposition

- a) Any person interested can give a notice of opposition against the grant of Patent in Form 7 at the appropriate Office, any time after the grant but within one year from the date of publication of grant of patent.
- b) The opponent shall, along with the notice of opposition, send a written statement setting out the nature of opponent's interest, the facts upon which he bases his case and relief which he seeks and evidence, if any.
- c) The post-grant opposition can be filed on any of the grounds as mentioned in Section 25(2), but on no other grounds.
- d) After receipt of the notice of opposition, the Controller shall notify the patentee about the fact of receipt of such notice, without any delay.
- e) A copy of the statement and evidence, if any, shall also be delivered to the patentee by the opponent.

- f) If the patentee desires to contest the opposition, he shall file a reply statement setting out fully the grounds upon which the opposition is contested and evidence, if any, in support of his case within a period of two months from the date of receipt of the copy of opponent's written statement and evidence, if any, and also deliver a copy to the opponent.
- g) If the patentee does not desire to contest or does not file his reply and evidence within two months, the patent shall be deemed to have been abandoned and the Controller shall issue the order of revocation of Patent and the fact of revocation shall be entered in the register of patents.
- h) After receipt of reply from the patentee, the opponent may file his evidence in reply within one month from the date of delivery to him of a copy of the patentee's reply statement and evidence. The evidence in reply by the opponent shall be strictly confined to the matters in the patentee's evidence. The opponent shall also deliver a copy of his reply evidence to the patentee.
- i) No further evidence shall be delivered by either party, except with the leave or direction of Controller.
- j) Further evidence can be filed by either party if the same is prayed before the hearing is fixed by the Controller under rule 62, whereupon the Controller shall dispose of the petition by either allowing or rejecting it.
- k) Where a specification or other document in a language other than English is referred to in the notice of opposition or any statement or evidence, an attested translation thereof in English should be furnished along with such notice, statement or evidence, as the case may be.
- l) Evidence shall be filed on affidavits as required under Rule 126.
- m) Exhibits shall be filed as required under Rule 127.

2.5.9. Constitution of Opposition Board

- a) After receipt of a notice of opposition, an Opposition Board is constituted by the Controller, by order to examine such notice including all documents filed under rule 57-60 in connection with the opposition by the opponent as well as patentee
- b) The Board shall submit the report with reasons on each ground taken in the notice of opposition, after examining the notice along with all statements, documents and evidence submitted by the parties as a joint recommendation within three months from the date on which all such documents were forwarded to them

2.5.10. Hearing

- a) On completion of the presentation of evidence, if any, and after receiving the recommendation of Opposition Board, the Controller shall fix a date and time for the hearing of opposition and inform the parties at least ten days in advance.
- b) After hearing the party or parties desirous of being heard, or if neither party desires to be heard, then without a hearing and after taking into consideration the recommendation of Opposition Board, the Controller shall decide the opposition, i.e. revoke the patent or order amendments in the Patent or refuse the opposition by issuing a speaking order accordingly.

2.5.11. Maintenance of Patent–Renewal:

- a) To keep a patent in force, the renewal fees shall be payable at the expiration of the second year from the date of the patent or of any succeeding year and the same shall be remitted to the Patent Office before the expiration of the second or the succeeding year.
- b) Further, renewal of a patent can be done beyond the due date in the extended period of six months from the due date by filing Form-4 along with the prescribed fee.

2.5.12. Restoration of Lapsed Patents

When a Patent has ceased to have effect due to non- payment of renewal fees within the prescribed time, the Patent may be restored by filing an application for restoration in Form-15, within eighteen months from the date on which the patent ceased to have effect. Such application for restoration can be made by the patentee/assignee, or his legal representative and in case of joint applicants, then, with the leave of the Controller, any one or more of them without joining the others.

2.5.13. Procedure for disposal of application for Restoration

- a) When the Controller is *prima facie* satisfied after verification of evidence submitted in support of Form 15 that the failure to pay the renewal fee was unintentional and there had been no undue delay, the application for restoration will be published in the official journal under rule 84(3).
- b) If the Controller is satisfied that *prima facie* case for restoration has not been made, the Controller may issue a notice to the applicant to that effect. Within one month from the date of notice, if the applicant makes a request to be heard on the matter, a hearing 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 will be refused. In case of rejection of the application for restoration, a speaking order shall be issued.
- c) Any person interested may give notice of opposition in Form 14, in the prescribed manner, to the application for restoration within two months of the date of publication in the official journal on the grounds that the failure to pay the renewal fee was not unintentional or that there has been undue delay in the making of the application.
- d) The notice of opposition shall include a statement setting out the nature of the opponent's interest, the grounds of opposition and the facts relied upon. The notice of opposition shall be sent to the applicant by the Controller.
- e) The procedure specified in rules 57 to 63 for post grant opposition relating to filing of written statement, reply statement, reply evidence, hearing and cost shall apply in this case, except the procedural part related to Opposition Board provided under rule 62 (1) and 62 (5).
- f) When no opposition is received within a period of two months from the date of publication of application for restoration, or opposition, if any, is disposed of in favour of the applicant for restoration, 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 one month from the date of order of the Controller.

- g) The fact that a patent has been restored shall be published in the official journal.
- h) 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 the application for restoration, every order for restoration shall include the provisions and other conditions, as the Controller may impose for protection and compensation of above-mentioned persons. No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the Patent ceased to have effect and the date of the Publication of the Application for restoration of the patent.

2.5.14. Registration of Assignments/Transfer of Right

An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall be valid only if the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and has been duly executed.

2.5.15. Surrender of Patents

The patentee may at any time offer to surrender his patent through an application on plain paper. On receipt of such an offer, the Controller shall publish the offer in the Official Journal and also notifies every person (other than the patentee) whose name appears in the register as having an interest in the patent.

2.5.16. Revocation by Controller for non-working

- a) Where, in respect of a patent, a compulsory license has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory license, apply to the Controller for an order revoking the patent on the ground:
 - i. that the patented invention has not been worked in the territory of India, or
 - ii. that reasonable requirements of the public with respect to the patented invention have not been satisfied, or
 - iii. that the patented invention is not available to the public at a reasonably affordable price.
- b) Such an application shall contain such particulars, as may be prescribed, the facts upon which the application is based and, in the case of an application other than the one made by the Central Government, it shall also set out the nature of the applicant's interest.
- c) Such applications shall ordinarily be decided within one year from the date of presentation to the Controller.

2.5.12. Compulsory Licensing

- a) Where the Controller is satisfied on an application for compulsory license that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licenses under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of Section 84, order the grant of licenses under the patent to such customers of the applicant as he thinks fit as well as to the applicant.
- b) If the Central Government is satisfied, in respect of any patent in force in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licenses should be granted at any time after the grant thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette.
- c) Compulsory license for export of patented pharmaceutical products in certain exceptional circumstances.

2.5.13. Termination of Compulsory License

- a) Patentee or any other person deriving title or interest in the patent, may make an application in Form 21 along with the evidence in support of the application for termination of compulsory licence granted under Section 84 on the ground that the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur.
- b) The holder of the compulsory licence shall have the right to object to such termination.
- c) While considering such an application, the Controller shall take into account that the interest of the person, who had previously been granted the licence, is not unduly prejudiced.
- d) If the Controller decides to terminate the compulsory licence he shall forthwith issue an order giving terms and conditions, if any, of such termination and serve copies of the order to both the parties.

Table 2. Time limits prescribed by the Patents Act, 1970 and Patents Rules, 2003

S.No.	Description	Time	Provision
1.	Proof of right to make an Application	Six months from the date of Filing of application	Section 7(2) Rule 10
2.	Statement and undertaking Regarding foreign applications	Six months from the date of Filing of Application	Section 8(1)(a) Rule 12(1A)
3.	Subsequent information Corresponding to foreign filing	Six months from the date of Filing of application outside India	Section 8(1)(b) Rule 12(2)
4.	Information relating to objections in respect of novelty, patentability etc. in foreign filing	Six months from the date of communication by Controller	Section 8(2) Rule 12(3)

5.	Filing a complete specification after filing provisional Specification	Twelve months from the date of filing of the Provisional Specification	Section 9(1)
6.	Declaration of Inventorship (Form 5)	With the complete specification or within one month from the date of filing of the complete specification as the Controller may allow on an application made in Form-4	Rule 13(6)
7.	Reference to deposit of biological material	Three months from the date of filing of Application	Section 10(4) Rule 13(8)
8.	Convention application	Twelve months from the date of filing of the basic application	Section 135(1)
9.	Convention application (in case of multiple priorities)	Twelve months from the date of filing of first filed basic application	Section 135(1)
10.	Convention application (cognate)	Twelve months from the date of earliest filed application	Section 135(2)
11.	PCT national phase application	Thirty one months from the Priority Date	Rule 20(4)(i)
12.	Priority document (for convention application)	Three months from the date of communication from the Controller	Section 138(1) Rule 121
13.	Publication of application	Ordinarily within one month from the expiry of eighteen months from the date of filing or priority date, whichever is earlier, or within one month from the date of request for early publication.	Rule 24, Rule 24-A
14.	Withdrawal of application to prevent publication	Fifteen months from date of Filing or priority, whichever is earlier	Section 11-A(3)(c)
	Request for withdrawal of Application	Any time before the grant of Patent	Section 11-B(4), Rule 26
	Request for withdrawal and refund of Fee	In case withdrawal is requested after filing Request for examination but before issuance of FER, then fee is refunded as prescribed in the First Schedule	Rule 7(4A) , Rule 26

Patent flowchart below enumerates the various stages from filing till grant of a patent in India.

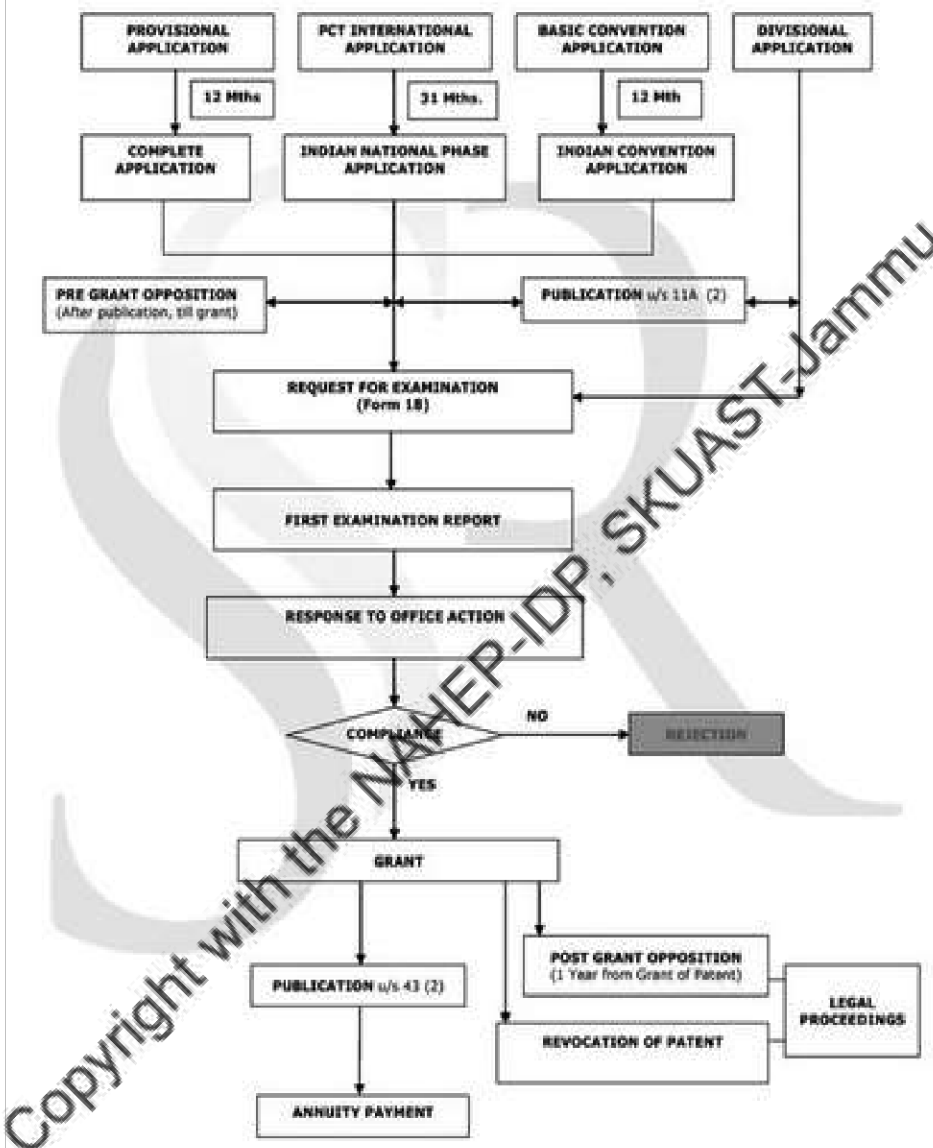


Fig. 1. Flowchart of filing patent application to grant of patent

Patent of Design

The term 'Design' mean according to the Designs Act, 2000:

We see so many varieties and brands of the same product (e.g., car, television, a piece of furniture, mineral water bottle etc.) in the market, which look quite different from each other. If the products have similar functional features or have comparable price tags, the eye appeal or visual design of a product determines the choices. Even if similarities are not close, a person may decide to go for a more expensive item because that item has a better look or color scheme suiting the person's taste and choices. What is being said is that the external design or colour scheme or ornamentation of a product play a key role in determines the market acceptability of the product over other similar products therefore, if you have a good external design that gives you an advantage then you must have a system to protect the features. This protection is provided by the Designs Act, 2000 in India. "Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, article appeal to and re judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device. Functional aspects of design are not covered in this Act.

Types of designs not registrable under the Act:

A designs which:-

- a) Is not new or original: or
- b) Has been disclose to the public anywhere in India or in any country by publication in tangible form or by use in any other way prior to the filing date, or where applicable, the priority date of the application for registration: or
- c) Is not significantly distinguishable from designs or combination of known designs: or d) Comprises or contains scandalous or obscene matter, shall not be registered.

The 'article' under the designs Act, 2000:

Article means any article of manufacture and any substance, artificial and partly natural; and includes any part of an article capable of being made and sold separately.

The object of registration of designs:

The design Act protect the new or original designs so created to be applied or applicable to particular article to be manufactured by industrial process or means. Sometimes purchase of article for use is influenced not only by their practical efficiency but also by their appearance. The object of design registration, therefore, is to see that the artisan, creator or originator of the design is not deprived of his bonafide reward by others applying it to their goods.

The essential requirement for the registration of design under the Designs Act, 2000:

1. The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter. However, if the design for which application is made does not involve any real mental activity for conception, then registration may not be considered.
2. The design should relate to features of shape, configuration, pattern, or ornamentation applied to an article. Thus, designs of industrial plans, layout and installation are not registrable under Act.
3. The design should be applied to any article by any industrial process. Normally, designs of artistic nature like painting, sculptures and the like which are not product in bulk by any industrial process are excluded from registration under the Act. Paintings and sculptures are matter of copyright.
4. The features of the designs in the finished article should appeal to and be judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant. Thus, any design in the inside arrangement of the box, money purse or almirah may not be considered for registration, as these are generally put in the market in the closed state.
5. Any mode or principle of construction or operation or anything, which, in substance is a mere mechanical device, would not qualify for registrable design. For instance, a key having its novelty only in the shape of its corrugation or bend at the portion intended to engage with levers inside the lock associated with cannot be registered as a design under the Act. However, when any design suggests any mode or principle of construction or mechanical or other action of a mechanism, a suitable disclaimer in respect thereof is required to be inserted on its representation, provided there are other registrable features in the design.
6. The design should not include any trade mark or property mark or artistic work.

The register of Designs:

The register of design is a document maintained by the patent offices, Kolkata as a statutory requirement. It contains the design number, date of filing and reciprocity date (if any), name and address of proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee and extract from register may also be obtained on request with the prescribed fee.

The duration of registration of the design:

The term of registration design is 15 years. Initially the right is granted for 10 years, which can be extended by another 5 years by making an application and paying a fee of Rs.2000/- to the controller before the expiry of initial 10 years period. The proprietor of design may make application for such extension as soon as the design is registered.

The penalty for the piracy of registered design:

If anyone contravenes the copyright in a design he is liable for every offence to pay a sum not exceeding Rs. 25,000/- to the registered proprietor subject to a maximum of Rs. 50,000/- recoverable as contract debt in respect of any one design.

The cost of filing design application in India:

The fee of filing application for registration of design in India is Rs. 1,000/-.

Copyright with the NAHEP-IDP, SKUAST-Jammu

Copyright

Introduction

- Copyright is an exclusive legal right granted to the creators of intellectual work.
- Copyright protects “original works of authorship” that are fixed in “a tangible form of expression.”
- Copyright owner has rights to reproduce, translate, adapt, perform, distribute and publicly display the work, etc.
- Registration is not mandatory since copyright comes into existence as soon as the intellectual work is created but registration of copyright has immense evidentiary value in the Court and hence registration of a copyright is recommended.
- The Copyright Act, 1957 governs the provisions relating to copyrights in India.

Works covered under Copyright

- Copyrightable works fall into the following categories:
- Literary including Software–Books, Essay, Compilations, Computer Programs.
- Artistic–Drawing, Painting, Logo, Map, Chart, Plan, Photographs, Work of Architecture.
- Dramatic–Screenplay, Drama.
- Musical–Musical Notations.
- Sound Recording–Compact Disc.
- Cinematograph Films–Visual Recording which includes sound recording.

The term of a copyright:

- a. If published within the life time of the author of a literary work, the term is for the life time of the author plus 60 years.
- b. For cinematography films, records, photographs, posthumous publication, anonymous publication, work of government and international agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published.
- c. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the work was made.

If any employ in a company develops a program, would this employee own the copyright? No. In case of the program made in the course of author’s employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the owner of the copyright.

If any independent third party develops a program for accompany, who owns the copyright?

The copyright in work created by third parties on commission do not automatically belong to commissioning party. If third party is an independent contractor, it is essential for the commissioning party to obtain the copyright through a written deed of assignment. It is a common misconception that the copyright

automatically belong to the commissioning party. Thus, it is only where the developer is an employee creating the work under a contract of service that the rights belong to the employer.

The rule for the transfer of copyright:

The owner of the copyright in an existing work or prospective owner of the copyright in a future work may assign to any person the copyright, either wholly or partially in the following manner:

- i. For the entire world or for a specific country or territory; or ii. For the full term of copyright or part thereof; or iii. Relating to all the rights comprising the copyright or only part of such rights.

The cost of filing copyright in India:

S.No.	Action	Official fee
1	For an application for registration of copyright in a- a. Literary, dramatic, musical or artistic work b. Literary or artistic work which is used or is capable of being used in relation to any goods	Rs. 500 per work Rs. 2000 per work
2	For an application for registration of copyright in a Cinematograph Film	Rs. 5000 per work
3	For an application for registration of copyright in a sound Recording	Rs. 2000 per work

TRADEMARKS

The Trademarks Act 1999:

Enactment of the Trademarks Act 1999 is a big Step forward from the Trade and Merchandise Marks Act 1958 and the Trademark Act 1940. The newly enacted Act has Some features not present in the 1985 Act and these are:-

- 1. Registration of service marks, collective marks and certificate trademarks.
- 2. Increasing the period of registration and renewal from 7 years to 10 years.
- 3. Allowing filing of single application for registration in more than one class.
- 4. Enhanced punishment for offences related to trademarks.
- 5. Exhaustive procedure for registration of registered users and enlarged scope of permitted use.
- 6. Constitution of an Appellate for speedy disposal of appeals and rectification application which at present lie before High Court.

The definition of Trademark:

A ‘trademark’ is a distinctive sing, which identifies certain goods or services as those produced or provided by a specific person enterprise. A trademark may be one or a combination of words, letter and numerals. It may also consist of drawings, symbols, three- dimensional colours and combination of colours. It is used by traders / companies /firms etc to distinguish their goods and services from those of their competitor. A consumer associates some level of quality/ price/ prestige with the goods of a particular trademark. In other words, the consumer uses the trademark for

making a choice while buying a particular product. There are so many examples in our day to day life such as TATA, BATA, Liberty, Brooke Bond, Dabur, Baidyanath, Park Avenue, SAIL and so on. Trademarks do not protect the design or the ideas behind the goods or services from imitation or duplication, but prevent other traders/company/firm from deceiving customers into believing that goods or services actually produced by them were produced by the trademarks holder.

The meaning of “service” in the Trademark Act 1999:

Service means service of any description which is made available to potential users and include the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

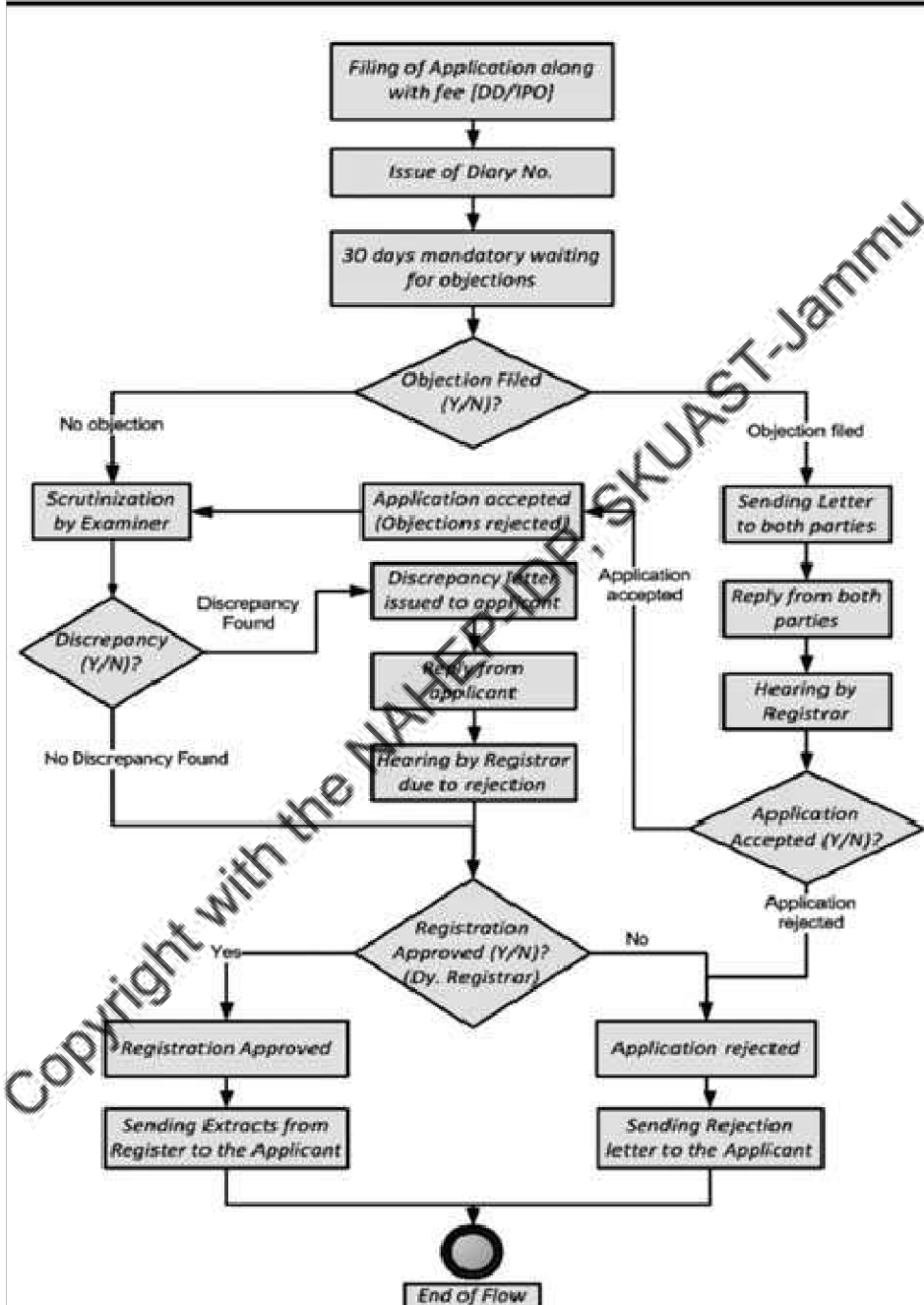
The term of registered trademark:

The initial registration of a trademark shall be for a period of 10 years but may be renewed from time to time of an unlimited period by payment of renewal fees.

The cost of filing trademark application in India:

No.	Action	Official fee
1.	Application to register a trade mark for a specification of goods or services included in one class	Rs. 4,000/-
2.	Application to register a textile trade mark consisting exclusively of numerals or letters or any combination thereof for specification goods included in one item	Rs. 3,500/-
3.	Application to register a collective mark for a specification of goods or services included in one class	Rs. 10,000/-
4.	Application to register a certification trade mark for specification of goods or services included in one class	Rs. 10,000/-
5.	Renewable of registration	Rs 5,000/-
6.	Application for approval of Registrar	(i) For first mark Rs. 2,500/- (ii) For every additional mark Rs. 500/-
7.	Application under geographical Indications of goods (Registration and Protection) Act, 1999 to refuse or invalidate registration of a trade mark consisting of Geographical Indication etc.	Rs. 3,000/-

Copyright Registration Workflow



Copyright with the WATER MARK: SKUAST-Jammu

Terms of Copyright

- Literary, Dramatic, Musical or Artistic Works–Lifetime of the author until 60 years from the death of the author.
- Anonymous & Pseudonymous Works–60 years from the year the work was first published.
- Works of Public Undertakings & Government Works–60 years from the year the work was first published.
- Works of International Organizations–60 years from the year the work was first published.
- Sound Recording–60 years from the year in which the recording was published.
- Cinematograph Films– 60 years from the year in which the film was published.

How can you contribute?

Photos, text, illustrations, movies, music, etc. available on the Internet maybe owned by someone else, so always remember –

- Respect what belongs to others because using someone else's copyrighted work without their permission is called piracy, which is a crime.
- Always watch movies and listen to music bought from authorized websites and mobile applications and help us stop piracy
- Be creative and create original content

Copyright Office

- You may contact the Copyright Office here–<http://copyright.gov.in/frmContactUs.aspx>
- Still confused? Here are some FAQs–<http://copyright.gov.in/frmFAQ.aspx>
- Want to register your Copyright? Click here–<http://copyright.gov.in/UserRegistration/frmLoginPage.aspx>
- Already filed an application. Want to know the status? Click here–<http://copyright.gov.in/frmStatusGenUser.aspx>

Source:

<http://cipam.gov.in/index.php/know-your-ip-2/copyrights/>

Trade Secrets

Introduction

For thousands of years, businesses and crafts people have guarded valuable secrets. Such secrets could be anything from a secret formula for a dye, to a better way of making a product, to the names of businesses' best customers and the prices they pay. Trade secrets are a type of intellectual property (IP) that companies view as strategically important to provide them with a competitive advantage. Thus, it is imperative for businesses to understand the concept of trade secrets and further safeguard their trade secrets from theft.

What can be Trade Secrets?

- i. Technical Information
- ii. Business Information
- iii. Finance Information

Why Protect Trade Secrets?

- Keep Competitive Advantage
- Avoid Damage to Reputation

When is it a Trade Secret?

- i. Undisclosed
- ii. Commercially Valuable
- iii. Steps To keep it secret

A trade secret is any confidential information that is valuable to your business.

The name “**trade secret**” itself indicates what it means:

Trade—The information has commercial value to your business. You get an advantage by keeping it a secret.

Secret—The information must be secret. It should not be known outside your business and should not be easy for others to know about it.

You must take reasonable measures to protect your information from being stolen or leaked. The law won't help you protect secrets unless you make some effort to do so yourself.

What protection does trade secret law give you?

If somebody wrongly takes your secret, you will be able to stop them from using it. Also, they will have to pay you for damages caused due to trade secret theft.

Many types of information can be a trade secret. It can be classified in two broad categories:

Technical information

- *Product formulas and recipes*
- *Product designs*
- *Manufacturing processes*
- *Computer code*

Business and Financial information

- *Customer lists*
- *Consumer preferences*
- *Pricing information*
- *Marketing and business plans*

Famous Trade Secrets

Various companies across the world have quickly recognised the immense value of maintaining the secrecy of certain intellectual assets. Companies protect such assets as Trade Secrets so as to have a competitive advantage over their competitors. Search algorithm like Google, the Coca-Cola recipe, McDonald's Big Mac Special Sauce Recipe and KFC's Recipe are just some of the famous trade secrets that are protected zealously.

What's Not a Trade Secret?

These things are not a trade secret:

Information competitors can discover by looking at or studying the product. Those things might stay a secret until they are released to the market, but not after. Information independently developed. You can stop others from using your secrets, but if they do their own research to discover the same thing, you cannot stop them.

Employees' general skills and knowledge. Departing competitive advantage over their competitors. Search algorithm like Google, the Coca-Cola recipe, McDonald's Big Mac Special Sauce Recipe and KFC's Recipe are just some of the famous trade secrets that are protected zealously.

Employees cannot take your secrets, but they can use the general skills and knowledge they learn from you. So a salesperson can't take your customer list and a production manager can't take your product recipes. But they can go to a competitor and use the skills they learned working for you. Information that has actually become public for any reason. If your information is exposed to the public—for example, published on the internet—then it is no longer a trade secret. If somebody wrongly exposed it, then they might have to pay you damages. But it is no longer a trade secret.

Why Protecting Trade Secrets Matters to You?

It's almost certain that all businesses have trade secrets. That's because any confidential information that is valuable to the business and gives it some edge can be protected as a trade secret. Almost everything a company values—its inventions, its new product designs, its brands, and its business plans—may be a trade secret. Trade secrets are particularly important to smaller businesses (Micro, Small, and Medium Enterprises—MSMEs). They rely on them more than any other kinds of IP because the upfront costs are cheaper. You don't need to file a registration or pay fees. Instead, trade secret law demands that you do what smart businesses should do anyway—such as having good security and making important employees sign contracts.

In India and around the world, savvy businesses view trade secret protection as a competitive business strategy. The European Union surveyed business about the

value of trade secrets. The survey found that companies of all sizes relied on trade secrets, including SMES. 75% of businesses ranked trade secrets as “strategically important to their company’s growth, competitiveness and innovative performance.” 51% of them said they were important or vitally important to maintaining a competitive advantage, ahead of all other forms of IP.

Choosing Between a Patent and Trade Secret

Sometimes, a business may face a choice between keeping information secret or filing for a patent. The first question is if such a choice is available.

Subject Matter - Trade secrets apply to more types of information than patents. Trade secrets cover customer lists, price lists, and other commercial information as well as products and processes. On the other hand, you can get patents for only “new products or processes.” Information such as a customer list would not qualify. However, trade secret law protects only secrets. Many inventions can’t be kept secret. For example, the design of a mobile phone case is known as soon as it is seen. Or, a competing engineer may learn the secret of a new engine design by studying it once it is on the market. Inventions that can’t be kept secret can’t be protected by trade secrets, but patents might be available.

Capable of Industrial Application: Under Indian law, an invention must be “capable of being made or used in an industry” to receive a patent. On the other hand, trade secret law can protect an invention still under development. The research that a business does to create a new product or process may be very valuable, even if not yet finished. Trade secret law can probably protect that research so long as it is kept secret.

In cases of patentable information, an inventor or company can choose to publicly disclose an invention in order to secure a patent for it and so that the world can benefit from it along with the knowledge that went into its creation. Alternatively, he may choose not to apply for a patent and to keep the information as secret, thereby preventing the knowledge to be shared with the public.

Comparison between Patents and Trade secrets

ATTRIBUTE	PATENTS	TRADE SECRETS
Scope of Protection	Limited subject matter	Broad subject matter
Term of Protection	20 Years	Indefinite (as long as the secrecy is maintained)
Procedural Formalities	Registration required	No Registration required
Type of Protection	Exclusive rights are granted and protection against infringement	No Exclusive rights are granted and protection is only against misappropriation
Disclosure	Required	Not Required
Cost	Expensive to file and process	Comparatively Low
Time	Complete protection may take years	Immediately effective

If you have an invention that you could protect as either a trade secret or patent, you face a choice. There is no single right answer for everybody. It depends on your business's needs and resources.

Choosing the Right Approach

When deciding whether to protect or exploit an invention as a trade secret, innovators may consider the following key points:

- Trade secret is non-patentable
- Trade Secret utility is likely to outlast the 20 years patent protection.
- Secrecy of information can be reasonably maintained for over 20 years.
- Fewer possibilities for other businesses to reverse engineer it.
- Trade Secret is not easily detectable and embedded in the product itself.
- Trade Secret is part of an internal manufacturing process.

In some cases, trade secret and patent protection can co-exist, for e.g. a drug may be protected under patent law but the extraction process used in its creation may be protected as a trade secret for infinity provided that the secrecy is maintained.

The Greatest Threats to Trade Secrets

Understanding the Threat of Trade Secret Loss

Most businesses are not doing everything they can to protect their trade secrets. Every business with trade secrets needs a strategy to protect them. They are all too easily lost—like any secret, they can be exposed by a single mistake. The biggest threat to trade secrets has always been employees. Employees know a business's most valuable information. If they have bad intentions, they can do great harm. Customers and business partners can lose faith in your business and turn away investors. Even well-meaning employees can cause the loss of trade secrets. For example, a poorly trained employee trying to make a sale might share valuable secrets with customers. A misdirected text message or email might expose valuable secrets. Despite these threats, businesses are not as careful as they should be. The Ponemon Institute reports that 71% of employees say they have access to company information they should not be able to see, and 54% of them said that the access was frequent or very frequent.

Losing trade secrets can be a disaster. Competitors can use stolen secrets to copy your products and sell them for cheaper prices. Some companies are destroyed.

Protecting Trade Secrets in India

In India, you must show that the person who took your secret had a duty to you to keep it secret. Usually, they have a duty if they work for your business, are a business partner, or have signed a contract promising to keep the secret.

To make sure that there is a duty, businesses in India find it wise to have their employees and anyone else who sees their secrets sign a contract to keep them secret.

Supplier and Customer Lists:

A sales manager of an Indian company, ABC International that made evaporative cooling equipment, left to go to a competitor who had a same business as that of ABC International. Before he left, he allegedly made a backup of all the confidential data that was available on his company laptop, including supplier and customer lists, business plans, and strategies of trade and marketing that was company's trade secret. While the Delhi High Court allowed him to work for the competitor, he was prohibited from approaching his old employer's suppliers and customers to solicit business that was in direct competition.

Manufacturing Know-How and Customer Specifications:

XYZ Enterprise had a business of making a complex, customised, and valuable piece of equipment for steel manufacturers. A senior employee of XYZ Enterprise retired and set up a competitive business. In months, the newly-formed business was selling the same equipment to a former XYZ customer at a lower price. Making of the equipment required non-public knowledge of the materials used and each customer's unique needs. The unlikely speed with which the new competitor developed and delivered this product led the court to believe that it had used XYZ's trade secret. The Karnataka High Court prohibited the former employees and their company from using XYZ's confidential information.

Technical Designs and Blueprints:

There were two Indian competitors who made mobile hydraulic cranes. The defendant hired a former employee of the plaintiff and soon began to market a crane that was allegedly an exact copy of one of the plaintiff's best-selling models. The former employee was a long-time production manager for the plaintiff with access to blueprints of the crane and intimate knowledge of its manufacturing process. The Delhi High Court found reason to believe that the former employee provided confidential information and prohibited the defendant from producing any crane using plaintiff's trade secret.

How to Protect Trade Secrets?

Businesses need to take "reasonable steps" to protect their confidential information for two good reasons:

Firstly, a court won't protect what you do not try to protect yourself. Secondly, you need these protections as a practical matter. The first question you may ask is what steps are reasonable answer is different for every business.

It depends on:

- *The value of the secret*
- *The risk of theft, and*
- *What the cost of protection is.*

For some secrets, ordinary locked doors may be enough. For the most valuable secrets in the world, even armed guards and fingerprint scanners might not be quite enough. Here are a few basic rules that every manager should know and that should be told to every employee.

- Don't give access to trade secrets or confidential information until it has been approved and a Non-Disclosure Agreement (NDA) is in place.
- Keep trade secrets out of sight and away from others.
- Never use personal email accounts to transfer confidential information.
- Use password protection for confidential documents, folders and screen savers.
- Guard access to any computers and physical areas with confidential information.
- Mark hard copies of information "confidential" or "proprietary."

Also, be very cautious when it comes to your computer. Be careful when receiving unfamiliar emails, because many have links that when clicked will download malicious software onto your computer to steal information.

Source: Cell for IPR Promotion and Management (CIPAM)

Copyright with the NAHEP-IDP, SKUAST-Jammu

Geographical Indications

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. GI passed in the Parliament, GoI in 1999 and came into force on 15th Sept. 2003. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of Intellectual Property Rights.

The TRIPS Agreement contains a general obligation that parties shall provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good. There is no obligation under the Agreement to protect geographical indications which are not protected in their country of origin or which have fallen into disuse in that country. A new law for the protection of geographical indications, viz. the Geographical Indications of Goods (Registration and the Protection) Act, 1999 has also been passed by the Parliament and notified on 30.12.1999 and the rules made there- under notified on 8-3-2002. The Indian Parliament enacted in 1999.

The State of Jammu and Kashmir might boast of many unique products from its indigenous pool, however, in reality, only seven of them carry the Geographical Indicator (GI) tag. What is more bizarre is that none of them is from Jammu region. Of the expansive list of more than 350 products that have been granted GI tag in India till date, merely eight products of J&K, namely Kashmiri Pashmina, Kashmiri Sozani Craft, Kani Shawl, Kashmir Paper Machie, Kashmiri Walnut Carving, Khatamband, Kashmiri Hand Knotted Carpet and Kashmiri Saffron have been able to receive the said tag in these 17 years. J&K has more than 20 products that are eligible for GI status in different categories. In Jammu division alone, there must be over 10 such products, but are victim to general apathy. The products like Bhaderwah Rajma, Kud Patisa, RS Pura Basmati, Jammu Anardana, Jammu Black Morels (Gucchi), Jammu Chikri wood work, Rajouri Darhal, Udampur Kaladi, Paddar Sapphire, Basohli Pashmina Shawls, Basohli Paintings, Samba Calicos, and White Honey of Doda, Kishtwar, and Udampur, have been indispensable part of lives of people in Jammu division, and can rightly make it to the GI list.

GI status can usher in gainful employment for thousands of people associated with these products. GI tag, an Intellectual Property Rights (IPR) tag, identifies a product as originating in a particular territory with special quality or reputation attributable to its geographical origin. Apart from conveying a product's quality and distinctiveness, that helps the producers and consumers to differentiate from competitors, it generates a premium brand price for the product internationally.

Furthermore, it provides legal protection to the registered product and their producers.

The registered proprietor of a geographical application:

Any Association of persons or of producers or any organization or authority established by or under the lock and be registered proprietor. Their name should be entered in the Register of Geographical Indication as registered proprietor for graphical indication applied for. An authorized user has the exclusive rights to the use of geographical indication in relation to goods in respect of which it is registered. Authorized user is any person claiming to be the producer of the goods in respect of which a geographical indication has been registered. For becoming an authorized user the person has to apply in writing to the Registrar in prescribed manner and by paying requisite fee.

The ‘producer’ for the purposes of GI act: ‘Producer’ in relation to goods, means any person who:-

- a) Produces, processes or packages agricultural goods
- b) Exploits natural goods
- c) Makes or manufacturers handicraft or industrial goods.

Documents required for filing Geographical Indications

An application for registration of a geographical indication is to be made in writing using a replica of the official application Form GI-1 for the registration of a Geographical Indication in Part A of the Register by an Indian applicant; Form GI- 2 for a convention application; an application for goods falling in different classes by an Indian applicant in Form GI-3 and an application for registration of goods falling in different classes from a convention country in Form GI-4 along with prescribed fee, and should be addressed to the “Registrar of Geographical Indications”.

Additional Requirements

Application in prescribed forms (submitted to The Registrar of Geographical Indications)

- How the indication serves to designate the goods as a Geographical Indication?
- The class of goods;
- The territory;
- The particulars of appearance;
- Particulars of producers;
- An affidavit of how the applicant claims to represent the interest;
- The standard bench mark or other characteristics of the geographical indication;
- The particulars of special characteristics;
- Textual description of the proposed boundary;
- The growth attributes in relation to the G.I. pertinent to the application;
- Certified copies of the map of the territory;
- Special human skill involved, if any;

- Number of producers; and
- Particulars of inspection structures, if any, to regulate the use of geographical indication.

Can all the graphical indications be registered?

No, a GI can't be registered if:-

- It's use is likely to deceive or cause confusion or be contrary to any law;
- It comprises or contains scandalous or obscene matter or any matter likely to hurt religious susceptibilities of any class or section of the citizens of India;
- It is a generic name;
- It has ceased to be protected in their country of origin or which have fallen into disuse in that country;
- It is falsely represented by persons claiming that goods originate in another territory, region or locality as the case may be.

The time of GI protection:

The registration of GI shall be for a period of 10 years but may be renewed from time to time for an unlimited period by payment of the renewable fees.

The cost of registering a GI in India:

S. No.	Action	Official fee
1	On application for the registration of a geographical indication for goods included in one class	Rs. 5000/-
2	On a single application for the registration of a geographical indication for goods in different classes	Rs. 5000/- for each class
3	On application for the registration of an authorized user of a registered geographical indication	Rs. 500/-
4	For renewal of an authorized user	Rs. 1,000/-

Class	Products / Goods
Class 1	Chemical used in industry, science, photography, agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesive used in industry
Class 2	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters; decorators; printers and artists
Class 3	Bleaching preparations and other substances for laundry use; cleaning; polishing; scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions, dentifrices
Class 4	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels(including motor spirit) and illuminants; candles, wicks

Class 5	Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides
Class 6	Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores
Class 7	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs
Class 8	Hand tools and implements (hand-operated); cutlery; side arms, razors
Class 9	Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus
Class 10	Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials
Class 11	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying ventilating, water supply and sanitary purposes
Class 12	Vehicles; apparatus for locomotion by land, air or water
Class 13	Firearms; ammunition and projectiles; explosives; fire works
Class 14	Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; homological and other chronometric instruments
Class 15	Musical instruments
Class 16	Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks
Class 17	Rubber, gutta percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal
Class 18	Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery
Class 19	Building materials, (non-metallic), non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

Class 20	Furniture, mirrors, picture frames; goods(not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother- of-pearl, meerschaum and substitutes for all these materials, or of plastics
Class 21	Household or kitchen utensils and containers(not of precious metal or coated therewith); combs and sponges; brushes(except paints brushes); brush making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes
Class 22	Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes) padding and stuffing materials(except of rubber or plastics); raw fibrous textile materials
Class 23	Yarns and threads, for textile use
Class 24	Textiles and textile goods, not included in other classes; bed and table covers.
Class 25	Clothing, footwear, headgear
Class 26	Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers
Class 27	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile)
Class 28	Games and playthings, gymnastic and sporting articles not included in other classes; decorations for Christmas trees
Class 29	Meat, fish, poultry and game, meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats
Class 30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces, (condiments); spices; ice
Class 31	Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt
Class 32	Beers, mineral and aerated waters, and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages
Class 33	Alcoholic beverages(except beers)
Class 34	Tobacco, smokers' articles, matches

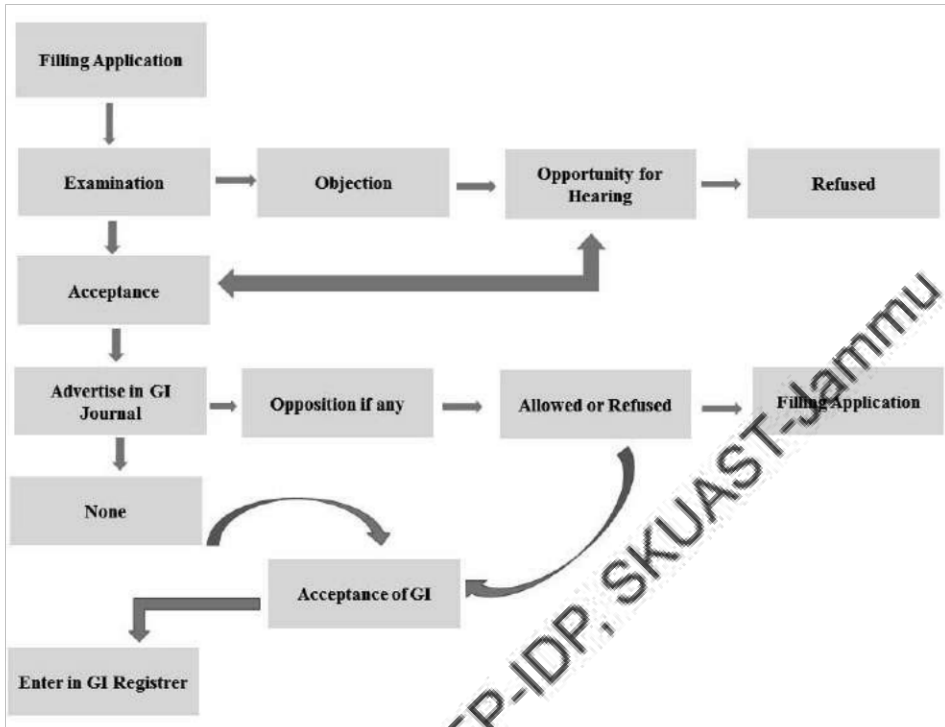


Fig. 1. Flow diagram showing the procedure for GI registration.

GI Product Scenario in J&K and Ladakh

Stalls	Products
GI Granted	Kashmir Saffron Kashmir Pashmina Kani Shawl Kashmir Hand Knotted Carpet Kashmir Paper Machie Basmati rice
GI Underprocess Products	Bhaderwah Rajmah Udampur Kaladi Doda Gucchi Basohli Pashmina Basohli Painting Rajouri Chikhri craft Ranban Anardana Sulai Honey Mushkbudgi rice Kashmiri Kala Zeera Pashmina Wool of Ladakh

	Kishtwar Kala Zeera Marwa Rajmash Abdullian Milk Cake Poonchi Rajmash Kuth Goazaban Pumbe challan Kod (Cod) Meat Products Harisa Gushtaba Tabakhmaaz Red Rice Gathia Thom (Hill Garlic) Moth (Poonchi) Chandak Basmati (Poonchi) Olive
GI Potential Products	Sambe da Bhalla Thandi khui ki Barfi Bamboo Handicrafts Amlook (Persimmon) Loran Mooth Local Cucumber Moond Wheat Anardana Kalazeera (Padri Zeera) Bhajarbhang Seul Kuttu Atta (Buck Wheat) Lemon Grass Oil Handicrafts (Local grass namely Babyan made products) Foxtail Millet Dese De Mattar Scara Oria Kud ka patisa

FILING OF GEOGRAPHICAL INDICATIONS APPLICATION

03.01	<p>The Applicant Any association of persons or producers or any organisation or authority established by or under any law representing the interest of the producers of the concerned goods may apply for registration of a Geographical Indication.</p> <p>The Applicant has to be a legal entity and should be representing the interest of producers of the good applied for. Any such organisation or association being not that of the producers may have to prove that they represent the interest of producers. Any Applicant Authority also have to prove that they represent the interest of producers.</p>	Section 11
03.02	<p>Jurisdiction The GI Registry is situated at Geographical Indications Registry, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai-600032 having all-India Jurisdiction. Application or any other document may be filed directly in the GI Registry, Chennai, or may be sent by post or registered post or speed post or courier services.</p>	
04.01	<p>Preliminary Examination</p> <ul style="list-style-type: none"> ● On receipt of an application, the Examiner/Authorised Officer shall scrutinize the application and the accompanying Statement of Case as to whether it meets the requirements of the GI Act and the Rules viz.; ● application has been filed in a proper Form ● prescribed Fees have been paid ● applicant or his agent has appended his signature in the Application ● application has been filed along with Five Additional representations ● application has been filed along with Statement of case in triplicate ● application has been filed along with Three Certified copies of Map, which should clearly indicate the latitude and longitude of the Geographical Indications Area. ● address of Service in India is provided in case of a Convention Application. ● power of attorney or Authorisation Form has been executed and submitted in Original. ● class of Goods has been mentioned correctly. ● documentary evidence (Original/Notarised/Attested) relating to the legal status of applicant such as Memorandum and Articles of Association, Bye-laws, Registration certificates, etc. has been filed. ● translation / transliteration of the non-English / Hindi text has been provided. 	

	certificate from the competent authority of the convention country has been filed along with the necessary particulars.	
04.02	<p>Communication of deficiencies found in preliminary examination:</p> <ol style="list-style-type: none"> 1. Deficiencies if any found through a preliminary examination as mentioned in the above paragraph shall be communicated by the Examiner/Authorised Officer to the Applicant or his Agent. 2. The deficiencies shall be complied with in a time limit mentioned in the communication as above. 3. If the Applicant fails to remedy any deficiencies within the stipulated time so notified, the Application may be treated as abandoned. However, the Applicant may file a request of extension of time of One month in Form GI-9(C) with prescribed fee. 4. When the deficiencies are compiled the Examiner/ Authorised Officer shall submit the Application to the Registrar of GI for his consideration. 	Rule 31 Form GI-9(C)
04.03	Examination of Application	
04.03.01	<p>Upon compliance of the deficiencies, the Registrar shall ordinarily constitute a Consultative Group of not more than seven representatives to ascertain the correctness of the particulars furnished in the Statement of Case.</p> <ol style="list-style-type: none"> 1. The Consultative Group is chaired by the Registrar of Geographical Indications. 2. The remaining members are identified from any organisation, authority or persons well versed in the varied intricacies of the Geographical Indications Law or field, to ascertain the correctness of the particulars furnished in the statement of Case. 3. As a matter of practice, for the benefits of the Applicants the Consultative group meeting are being held at the GI Registry, Chennai and Intellectual Property Offices situated in Delhi, Mumbai and Kolkata. The Meetings may also be held at other locations if the situation so warrants. 4. The Applicant will be invited to make a detailed presentation before the Consultative Group to explain the statement of case. The Consultative Group ascertains the correctness of the particulars of Statement of Case and recommends for amendments, corrections or furnishing of further documents. The Group may visit the production area in order to further assess the correctness of the Statement of Case. 5. The proceeding before the Consultative group will be ordinarily completed within three months from the date of constitution. 	Rule 33, 34

	<ol style="list-style-type: none"> 6. There upon the Registrar shall consider the Application on merits and based on observation / comments of Consultative Group, issues an Examination Report. 7. The Examination Report may contain objections to the acceptance of the Application or proposal to accept it subject to such conditions, amendments, modification or limitations as the Register may think fit to impose. 8. The Applicant shall within two months of the date of communication of Examination Report comply with proposals mentioned in the Examination Report or submit his observation or apply for a Hearing. 9. If the applicant fails to amend his application or submit his observations in writing or fails to apply for a hearing or fails to attend the hearing, the application shall be dismissed. 10. If the Application is found to be in order, the Registrar accepts the Application and publishes it in the ensuing GI Journal 	
04.04	<p>Correction and Amendment of Application</p> <p>The applicant may, anytime before or after acceptance but before registration, may apply in Form GI -5 with the prescribed fee for correction of any error in or in connection with his Application or any amendment in his Application provided such proposed amendments does not relate to the amendment of the GI or description of Goods or to the definite territory, region or locality, as the case may be, that would have the substantially altering or substituting the original application.</p> <p>An amendment of GI or in the description of goods, or the territory, region or locality that would have the effect of substantially altering or substituting the original application will not be allowed.</p>	Section 11(2), 15, Rule 32, 36.
04.05	<p>Acceptance</p> <ul style="list-style-type: none"> ● The Registrar may accept the GI Application absolutely or subject to such amendments, modification, conditions or limitations as he thinks fit. ● The objections and/or proposal for conditional acceptance are to be communicated to the applicant. <p>In case of objections to the acceptance of the application or conditional acceptance, the grounds of objection or for refusal or conditional acceptance and the materials used by him arriving at the decision shall be recorded.</p>	Section 11
04.06	<p>Advertisement in GI Journal</p> <p>The Registrar of GI publishes all the GI Applications and authorised user applications in the Official GI Journal. The GI Journal is being published and is made available to the Public ordinarily in the first week of every month, through the Official</p>	Section 13 Rule 38

	<p>Website. CD-ROMs of each Journal can be obtained from the GI Registry on payment of Rs. 250.</p> <p>GI Application is published with the following details:</p> <p>(A) Name of Geographical Indication alongwith Logo</p> <p>(B) GI Application Number :</p> <p>(C) Name of the Applicant :</p> <p>(D) Address of the Applicant :</p> <p>(E) List of association of persons/ Producers / organization/ authority:</p> <p>(F) Type of Goods & Class</p> <p>(G) Statement of Case</p>	
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THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

(To be filled in triplicate alongwith the Statement of Case accompanied by five additional representation of the Geographical indication)

One representation to be fixed within the space and five others to be send separately FORM GI-1

A.	<p>Application for the registration of a geographical indication in Part A of the Register</p> <p>Section 11 (1), Rule 23(2)</p> <p>Fee: Rs.5,000 (See entry No.1A of the First Schedule)</p>	
B.	<p>Application for the registration of a geographical Indication in Part A of the Register from a convention country</p> <p>Section 11(1), 84(1), Rule 23(3)</p> <p>Fee : Rs.5,000 (See entry No.1 B of the First Schedule)</p>	

1. Application is hereby made by for the registration in Part A of the Register of the accompanying geographical indication furnishing the following particulars:-

- Name of the Applicant :
- Address :
- List of association of persons/producers/organization/authority:
- Type of goods:
- Specification:
- Name of the geographical indication [and particulars]
- Description of the goods :
- Geographical area of production and map :
- Proof of origin [Historical records] :
- Method of Production :
- Uniqueness :
- Inspection Body :
- Other:

Along with the Statement of Case in Class^b^b..... in respect of ^c in the name(s) of^d..... whose address is Who claims to represent the interest of the producers of the said goods to which the geographical indication relates and which is in continuous use since in respect of the said goods.

2. The Application shall include such other particulars called for in rule 32(1) in the Statement of Case.
3. All communications relating to this application may be sent to the following address in India.
4. In the case of an application from a convention country the following additional particulars shall also be furnished.
 - (a) Designation of the country of origin of the Geographical Indication.
 - (b) Evidence as to the existing protection of the Geographical Indication in its country of origin, such as the title and the date of the relevant legislative or administrative provisions, the judicial decisions or the date and number of the registration, and copies. of such documentation.

eSIGNATURE

NAME OF THE SIGNATORY

(IN BLOCK
LETTERS)

C	Application for the registration of a geographical indication In Part A of the Register for goods falling in different classes Section 11 (3), Rule 23(5) Fee: Rs.5,000 for each class (See entry No.IC of the First Schedule)	
D	A single application for the registration of a geographical Indication in Part A of the Register for goods falling in different classes from a convention country Section 11(3), rule 23(4) Fee : Rs.5,000 for each class (See entry No.ID of the First Schedule)	

1. Application is hereby made by for the registration in Part A of the Register of the accompanying geographical indication furnishing the following particulars:
 - Name of the Applicant:
 - Address :
 - List of association of persons/producers/organization/authority:
 - Type of goods.
 - Specification:
 - Name of the geographical indication [and particulars]
 - Description of the goods :
 - Geographical area of production and map :
 - Proof of origin [Historical records] :
 - Method of Production :
 - Uniqueness :
 - Inspection Body :
 - Other:
 along with the Statement of Case in Class
 - i) Class^b in respect of ^c
 - ii) Class^b in respect of ^c
 - iii) Class^b in respect of ^c

In the name(s) of ^d Whose address is Who claim (s) to represent the interest of

the producers of the goods to which the geographical indication relates and which geographical indication is used continuously since in respect of the said goods.

2. The Application shall include such other particulars called for in rule 32(1) in the Statement of Case.
3. All communications relating to this application may be sent to the following address in India.
4. In the case of an application from a convention country the following additional particulars shall also be furnished.
 - a. Designation of the country of origin of the Geographical Indication
 - b. Evidence as to the existing protection of the Geographical Indication in its country of origin, such as the title and the date of the relevant legislative or administrative provisions, the judicial decisions or the date and number of the registration, and copies. of such documentation.

Signature

Name of the Signatory (in Block Letters)

G1-1A to 1D

The Registrar of Geographical Indications,

The office of Geographical Indications Registry

- (a) Strike out whichever is not applicable
- (b) The Registrars' direction may be obtained if the class of the goods is not known.
- (c) Here specify the goods. Only goods included in one and the same class to be specified.
- (d) Insert legibly the full name, description (occupation and calling and nationality of the applicant). In the case of a body corporate or firm the country of incorporation or the registration, if any, as the case may be, should be stated, See rule 15.

Signature of the applicant or his agent.

The Act for protecting a new plant variety in India:

In order to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants it has been considered necessary to recognize and to protect the rights of the farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. The Govt. of India enacted "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001" adopting *sui generis* system. Indian legislation is not only in conformity with International Union for the Protection of New Varieties of Plants (UPOV), 1978, but

also have sufficient provisions to protect the interests of public sector breeding institutions and the farmers. Rules for the same were notified in 2003. The act has now come into force. The protection of Plant Varieties and Farmers' Rights Authority has been set up and is responsible to administer the Act. The legislation recognizes the contributions of both commercial plant breeders and farmers in plant breeding activity and also provides to implement TRIPs in a way that supports the specific socio-economic interests of all the stakeholders including private, public sectors and research institutions, as well as resource-constrained farmers. Under the TRIPs agreement it is obligatory on part of the member to provide reaction to new plant variety be there to protect or an effective sui generis system or a combination of these two systems. India was there for under an obligation to introduce a system for protecting new plant variety. India opted for sui generis system and enacted The Protection of Plant Varieties and Farmers' Rights Act 2001. However, in many countries such plants can be protected through Breeders' rights, patents and UPOV Convention.

The objectives of Protection of Large Varieties and Farmers' Right Act in India:

The objectives of the Protection of Land Varieties and Farmers' Rights Act are:-

- i. to stimulate investments for research and development both in the public and the private sectors for the developments of a new plant varieties by ensuring appropriate returns on such investments;
- ii. to facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian Farmers; and
- iii. to recognize the role of farmers as cultivators and consumers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution through benefit sharing and protecting a traditional rights of the farmers.

More importantly this act provides safeguard to farmers by giving farmers' rights by providing for an effective system of protection of plant breeders' rights. The Act seeks to safeguard researchers' rights as well. It also contains provisions for safeguarding the larger public interest. The Farmers' right includes his traditional rice to save, use, share or sell his farm produce of a variety protected under this Act provided the sale is not for the purpose of reproduction under a commercial marketing arrangement.

Rights under the Act Breeders' Rights

Breeders will have exclusive rights to produce, sell, market, distribute, import or export the protected variety. Breeder can appoint agent/ licensee and may exercise for civil remedy in case of infringement of rights.

Researchers' Rights

Researcher can use any of the registered variety under the Act for conducting experiment or research. This includes the use of a variety as an initial source of variety for the purpose of developing another variety but repeated use needs prior permission of the registered breeder.

Farmer's rights: The farmers' rights as defined in the act are:

- i. a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;
- ii. the farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (h) or sub-section (1) of section 18;
- iii. a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund.

Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act.

- iv. A farmer shall be deemed to be entitled to save, use, sow, reow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act.

Note: branded seed means any seed put in a package or any other container and labeled in a manner which gives indication that seed is of a variety protected under this Act.

In addition to the above, where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organization of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organization of farmers, as the case may be, the expected performance under given condition, and if such propagating material fails to provide such performance under such given conditions, the farmers or the group of farmers or the organization of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority shall, after giving notice to the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or organization of farmers, as the case may be.

The kind of varieties are registrable under the plant variety Act:

1. A new variety if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.
2. An extant variety if it conforms to criteria distinctiveness, uniformity and stability.

Extant variety defined in PPVFR Act 2001 is: An 'Extend Variety' means a variety, which is i. notified under section 5 of the Seeds Act, 1966 (54 of 1966); or

- ii. the farmers variety; or
- iii. a variety about which there is common knowledge; or
- iv. any other variety which is in the public domain.

The meaning of Farmers' Variety as per PPVFR Act, 2001:

- i. has been traditionally cultivated and evolved by the farmers in their fields; or
- ii. is a wild relative or land race of a variety about which the Farmers possess the common knowledge; where farmer means any person who (i) cultivates crops by cultivating the land himself or (ii) cultivates crop by directly supervising in the cultivation of land through any other person or (iii) conserves and preserves, severally or jointly, with any person and Wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties.

Essentially Derived Variety as per PPVFR Act 2001:

'Essentially Derived Variety' is a variety which is predominantly derived from another variety (protected or otherwise) and conforms to the initial variety in all aspects except for the differences which results from the act of derivation, and yet is clearly distinguishable from such initial variety.

How novelty, distinctiveness, uniformity and stability have been defined in the Protection of Plant Varieties and Farmers' Right Act?

A) Novelty- Plant variety is novel if at the date of filing of the application for registration for protection, the propagation are harvested material of such variety has not been sold or otherwise disposed of by or with the consent of breeder or his successor for the purpose of exploitation of such variety-

- (i) in India earlier than one year or
- (ii) outside India, in the case of trees or wines earlier than 6 years or in any other case, earlier than 4 years, before the date of filing such application:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection.

Provided further that affect that on the date of filing application for registration, propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety.

B) Distinctiveness- New plant variety will be considered distinct if it is clearly distinguishable by at least one essential characteristic States from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

C) Uniformity- New plant variety will pass uniformity test, if subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its essential characteristics.

D) Stability- New plant variety will be considered stable if its essential characteristics remain unchanged after repeated propagation or, in the case of particular cycle of propagation, at the end of each such cycle.

Compulsory Plant Variety denomination: After satisfying the above four essential criteria every applicant shall assign a single and distinctly domination to a variety with respect to which he is seeking registration.

Which plant varieties cannot be protected under this Act?

A plant variety which is:-

- i. Not capable of identifying such variety ; or
- ii. Consists solely of figures; or
- iii. Is liable to mislead or to cause confusion concerning the characteristics, value, identify of such variety, or the identify of breeder of such variety;
- iv. Is likely to deceive the public or cause confusion in the public regarding the identity of such variety;
- v. Is comprised of nay matter likely to hurt the religious sentiments respectively of any class or section of the citizens of India;
- vi. Is prohibited for use as a name or emblem for any of the purposes;
- vii. Is comprised of solely or partly of geographical name.

The term of plant variety protection:

- i. in the case of trees and vines, eighteen years from the date of registration of the variety;
- ii. In the case of extant varieties, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act,1966
- iii. In the other cases, fifteen years from the date of registration of variety.

Initially the certificate of registration shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be revived and renewed for the remaining period on payment of fees as may be fixed by the rules.

The cost of registering a plant variety:

S.No.	Action	Official fee
1	Conducting tests	Dependent on the nature and type of test subject to a maximum of Rs. 50,000 per entry
2	Fees for registration of essentially derived varieties	Individual-Rs. 5,000/- Educational- Rs. 7,000/- Commercial-Rs. 10,000/-
3	Renewal fee per year	Individual-Rs 5,000/- Educational- Rs 7,000/- Commercial-Rs. 10,000/-
4	Application for benefit sharing	Rs. 5,000/-

The Scheme for Facilitating Startups Intellectual Property Protection (SIPP):

The objective of scheme is to promote awareness and adoption of IPRs amongst startups. The scheme is inclined to nurture and mentor innovation and emerging technologies among Startups and assist them in protecting and commercialize it by providing access to high quality IP services and resources.

The entities qualify as being Start-ups:

An entity shall be considered as a ‘startup’-

- a) Up to 5 years from the date of incorporation/ registration.
- b) If its turnover for any of the financial years has not exceeded Rupees 25 crore, and

- c) It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;

Provided that any such entity formed by splitting up or reconstruction of business already in existence shall not be considered a ‘startup’.

The facilitator for processing of applications and his/her responsibilities:

- a) Any patent or trademark agent registered with CGPDTM
- b) Any advocate as defined under The Advocates Act 1961
- c) Government departments/ organizations/ agencies like TIFAC, NRDC, BIRAC, DEITY, DSIR etc.

A facilitator is responsible for:

- Providing general advisory on different intellectual property rights(IPRs) to startups on pro bono basis,
- Providing information on protecting and promoting IPRs to startups in other countries on pro bono basis,
- Providing assistance in filing and disposal of the IP application related to patent, trademarks and design under relevant Acts at the national IP offices under the CGPDTM,
- Drafting provisional and/or complete specification for inventions of startups,
- Preparing and filing responses to examination reports and other queries,
- Appearing on behalf of startup at hearing as may be scheduled,
- Contesting opposition, of any, by other parties, and
- Ensuring final disposition of the IP application.

The fees to be paid to the facilitator:

The fee is paid to the facilitator by the Government and is:

Stage of Payment		Patent (in Rs.)	Trademarks (in Rs.)	Design (in Rs.)
At the time of filing of application		10,000	5,000	2,000
At the time of final disposal of the application	Without opposition	10,000	2,000	2,000
	With Opposition	15,000	5,000	4,000

The facilitation will not charge anything from the startup or entrepreneur.

Intellectual Property Rights in Livestock Sector

Introduction

India is one of the 17-mega diverse countries of the world. With only 2.5 per cent of the land area, India accounts for 7.8 per cent of the global recorded species. India possesses one of the largest livestock population in the world, which is more than 522 million with the top position in cattle (190 million), buffalo (108 million), goat (135 million) and sheep (65 million), poultry (570 million), and pig (16 million). Further, the country has 16.49 per cent of the world cattle population and 56.78 per cent of the world buffalo population. Out of the total livestock in the country, around 38.2 per cent are cattle, 20.2 per cent are buffaloes, 12.7 per cent are sheep, 25.6 per cent are goats and 2.8 per cent are pigs. All other animals account for less than 0.50 per cent of the total livestock population. There are unique traits of the farm animals inhabiting Indian sub-continent which hold considerable potential application or utilization through biotechnologies. India is rich in traditional and indigenous knowledge, both coded and informal. The distinctive attributes of breeds could be exploited for profits by getting some form of IPR or protection.

In order to protect the interest of all stake holders of livestock farming in India, it is necessary to protect innovations in livestock sector through appropriate IP instruments along with conservation and sustainable use of native livestock breeds and associated traditional knowledge in the modern IPR regime. The unique attributes of indigenous livestock breeds could be exploited for profits by getting some form of intellectual property rights (IPR) or protection. An appropriate internationally accepted legal system with respect to use of livestock biodiversity and patenting of novel genes may bring about economic benefit to the livestock keepers in the IPR regime through benefit sharing (Ramesha, 2011).

Harmonization of IP regimes, access to technologies required for biotechnological research and development through easy licensing and/or patent exemptions especially for public benefit oriented research would pave way for making private investments and private-public participation attractive.

IPR Regime and Livestock Sector

A paradigm shift is required in livestock sector from production orientation to quality and cost orientation in the WTO era. In the present knowledge based global economy, protection of IP is critical for technology development and diffusion in all fields of livestock sector. Various forms of IPR have impact on trade and improvement in livestock sector. With respect to gene-based innovation, the most significant IPR is patents. Appropriate patent regimes have the potential to foster innovation in animal biotechnology and transfer of gene-based technologies. Inappropriate patent systems may be counter-productive. Indeed, many critics are doubtful that the current international patent standards, based as they are on a combination of the United States of America's and European regimes, can help countries that lack the capacity to enhance life science and biotechnology research to become more innovative or contribute to the acquisition, absorption and, where

desirable, adapt imported new gene-based technologies. In general, patenting of life forms is a new phenomenon in most of the countries including India. Mega-biodiversity countries want disclosure of source and country of origin of the biological resource and of the traditional knowledge used in the invention, disclosure of evidence of prior informed consent under the relevant national regime and disclosure of evidence of benefit sharing under the relevant national regime to be included in the patent application. Even if one can identify an animal carrying unique gene/gene combinations, utilizing such unique genetic characteristics is extremely difficult due to long generation intervals, lower productive rates, high cost and low success rate of identifying and transferring unique genes in animals.

Copyright protects literary and artistic works which includes articles, books, web pages, computer software and music, and is applicable when the work is in a publishable form. Genetic material *per se* cannot be protected or covered by a trademark. A trademark can be a useful tool in livestock sector as means of value addition. The trademark can improve the value of a product. For example, semen straws from a reputed company with trademark may fetch higher price. Besides, a trademark which highlights the producer or a manufacturer of a product, a geographical indication (GI) emphasizes the geographical origin of a good and the characteristics derived from it. GI does not protect the breed or genetic material *per se* but adds commercial value to the animals of breed reared in a particular region. They may also be used as a value addition mechanism. Origin-based marketing in which control over production processes remains with the livestock keepers can empower livestock keepers and provide greater earning power. There is scope for utilizing GI based on unique characteristics of products produced from a breed in a geographical area due to natural conditions and unique production system.

Trade secrets are important in livestock breeding where commercial breeders want to keep their nucleus stock and the pedigree information (or other information) from their competitors. Sometimes the right to use the animal in breeding is determined through formal or informal contract. In the case of dogs, in many places an informal contract is followed whereby the male dog owner gets one male pup after successful breeding. Patenting of life forms is the most controversial aspect even among WTO members. Patent laws and their interpretations are subject to change, especially when new technologies are introduced. Mega biodiversity countries provide genetic resources for modern animal breeding and biotechnology industry. The genetic resources have been transferred freely to other countries in the past; under the understanding that these are common heritage of humanity. With the development of modern biotechnology, there is possibility that indigenous breeds/varieties may be genetically altered and the new variety/breed may later be substituted for the original breed/variety from which it was developed particularly in poultry and pigs. Biotechnology firms are interested in patenting processes and genes used in animal breeding as such. Patent protection will discourage the natural selection that, at present, takes place at farmers' level. The patenting of broad traits like increased milk yield or broad claims on genes/animals may lead to monoculture and monopoly which would result in hardship to the pastoralists, small and marginal livestock keepers.

Patenting Activities in Veterinary Sciences:

India is huge country of animal biodiversity contributing large quantity of milk, meat, egg, draught power, fibre, manure etc. generating rural employment. In order to improve the sustainable productivity of livestock in India, it is absolutely necessary to increase technological inventions and their protection. Animal scientists have now started to protect their intellectual property and these protective measures have alarmed other scientists and the public. The diversification in Indian agriculture was also noticeable during the period 2005 to 2012 as dairy products and animal husbandry registered 19.0 and 5.78 times increase in patenting activity over the period 1995–2004 besides development of new plants and processes (10.87 times) and horticulture and cultivation forestry rising (5.87 times). In India, the number of patent grants has increased significantly in all the fields of agricultural sciences particularly in the fields of transgenic, agro-chemicals and animal vaccines after the introduction of patent reforms in 2005 and accumulation of the applications during the transit period. Knowledge about patents in India at policy and decision making level in important public and private bodies are meager. A patent is a governmental grant of a temporary right to exclude others from making, using, or selling the claimed invention for a limited number of years (Basunahle *et al.* (2017)).

Intellectual property protection is in various forms, e.g. patents, designs, copyrights, trademarks, trade practices, domain names, appellation of origin, etc. As soon as the life of patent expires, it passes to the general public domain and now anybody can use it without the permission of the original inventor. It represent the largest form of IP which is good indicators of research and development output. The world of Intellectual Property Rights (IPR) and commercialization of scientific success is largely one-sided and Western dominated at present. Patent information and patent statistical analysis have been used for examining present technological status and to forecast future trends.

Creativity and innovations are the new drivers of the world economy. Since, past several decades main drivers for the advanced economies have been technologies and technological innovations rather than manufacturing and agriculture. The ability of the country to generate novel, useful, patentable innovations is negligible and practically non-existent in the disciplines which have already been targeted as economic growth areas (Bera, 2008). The number of Indian patents granted to foreign companies has been found three-times higher than those granted to the domestic inventors. The participation of foreign organizations has been increasing in India and they accounted for 75 per cent of the total patents granted during 2007-2012 (Kandpal *et al.*, 2015). Though, there is an increasing trend of patenting in agriculture and allied sector in India but most of the patents owned by foreign countries other than India. Today possession of land, labour and capital are just not enough for a country to succeed. However, the country has to fetch the real benefits of technology generation and commercialization in terms of patenting.

The number of patents in agricultural sciences is likely to be less due to exclusion of animals, plants and parts thereof and methods of agriculture

(Guruprasad *et al.*, 2003). Because of these the situation of patenting even in veterinary sciences is not so encouraging. Moreover, the specific and precise literature on patenting in veterinary science is also not adequately available. To encourage the veterinary scientific community for patenting of useful innovative technologies, efforts have been taken to focus on the general concept and patenting activities in veterinary sciences.

Copyright with the NAHEP-IDP, SKUAST-Jammu

Guidlines for Breed Registration (Livestock, Poultry)

1. Nature of Material to be registered

Breeds/populations/strains of domesticated animals and their wild relatives, which is unique, stable and uniform, and has potential attributes of academic, scientific or commercial value

The following categories of materials shall not qualify for registration

- (I) Material without accompanying documentary evidence for the claim made in the application.
- (II) Material for which any form of protection has been sought elsewhere.

2. Eligibility Criteria for Registration

Any population having at least 1000 animals will be considered for registration as a breed. These animals may be maintained by the applicant/breed society/ NGO/ Govt. Agency/ farmers in field conditions. All claims concerning the material submitted for registration should accompany scientific evidence for uniqueness, reproducibility and value in the form of-

- (I) Publication in standard peer reviewed journal (a copy of reprint to be submitted).

AND/OR

- (II) Evaluation data for at least three years under research programmes like All India Coordinated Research Project (AICRP), Network Project, Adhoc Schemes, etc. supported with relevant extracts of the documents or verification by concerned Director/Project Director (PD)/Project Co-ordinator (PC)

AND/OR

- (III) Publication of information on potential value of germplasm in institute annual report or any other such reports

AND/OR

- (IV) Recommendation of the State Animal Husbandry Department/Livestock Development Board regarding the novelty and uniqueness of the breed claimed.

3. Breed Registration Committee

The breed registration committee is constituted under the chairmanship of Deputy Director General (Animal Science), ICAR. It would include Assistant Director General (AP&B), ICAR; Assistant Director General (IPR&Policy), ICAR; Animal Husbandry Commissioner or his nominee; representative of National Biodiversity Authority; and Director, NBAGR as permanent members. A Principal Scientist from NBAGR will function as member secretary. The Other members will be co-opted as per the advice of the chairman. It will have provision (with the approval of the chairman) for adoption of need based species specialist with reference to the breed under consideration.

4. Nodal Agency

- (I) National Bureau of Animal Genetic Resources (NBAGR), Karnal will be the nodal agency for registration of breeds. The application should be addressed to the Director, NBAGR, along with the required information.
- (II) The Member Secretary, Breed Registration Committee will duly acknowledge with date the receipt of the application.
- (III) NBAGR will maintain a permanent register and database for listing the breeds approved by Registration Committee with details on unique traits.

5. Application Form

Application shall be made on the prescribed Performa. The Breed Registration Committee shall meet at least twice a year, with the concurrence of the Chairman, for consideration of applications and related matters and decision thereupon.

6. Who can Apply

Application can be submitted by any citizen of India / breed society registered as per constitution of India / NGO / Govt. agency

7. Screening of Application(s)

- (I) The proposal(s) submitted as per the prescribed Performa will be screened at NBAGR by the Member Secretary, Registration Committee, as per the guidelines of Check List.
- (II) The Bureau shall examine the historical facts, founder stocks, breeding policy and the present status of the proposed population to be registered as a breed.
- (III) The proposal(s) will be put up before the breed registration committee who will have the authority for acceptance or rejection.

8. Validity of Registration

The period for validity of registration shall be 25 years.

9. Notification of Registered Materials

All breeds approved for registration would be officially notified to the applicants along with Registration Number. A certificate will also be issued to this effect to the applicant.

Official Notification will be published along with brief description of not less than one page in the subsequent issue of

- (I) Indian Journal of Animal Sciences - Published by ICAR, New Delhi-110 012
An abstract form of the registered breed will also be published in following publication:
- (II) NBAGR Newsletter, Published by the Director, NBAGR, Karnal-132 001
- (III) ICAR News - Published by the Publication and Information Division, Krishi Anusandhan Bhavan, ICAR, New Delhi-110 012
- (IV) NBAGR, ICAR Website

10. Conservation, Maintenance and Sustainable Utilization of Registered Breeds

For conservation of genetic stock a network approach will be followed with NBAGR functioning as a central/nodal agency and the State Animal Husbandry Department/animal-based institute as co-operating centres.

- (I) Registered breeds will be conserved either live or in the form of cryopreserved sperms/embryos/oocytes at NBAGR Gene bank or at designated centers.
- (II) Semen/ova/embryos for supply to users would be maintained by the institution associated with the development of the breed.

11. De-notification

De-notification shall be done by the Registration Committee in case of false claim(s) or disputed IPR claim. Appeal for counter claim, if any, should reach the Registration Committee within a period of three months of the publication of Notification in Indian Journal of Animal Sciences - Published by the I.C.A.R.

Procedure for submission of proposal for breed registration

1. Submission of Application and Material

All applications for registration of proposed breeds should be submitted to the following address:

The Director

National Bureau of Animal Genetic Resources

P.O. Box. 129, Karnal-132001, Haryana

Phone: 0184-226 7918

FAX: 0184-226 7654

2. The applicant should submit 3 copies of the application along with relevant documents, literature, no matter how small (even one page), for the proper evaluation of the breed.
3. The application must be signed by the applicant and countersigned by Director, Department of Animal Husbandry of the concerned state or his representative with rubber seal.
4. The application must be accompanied by complete description of the breed using standard descriptors (as per concerned species).
5. Submit a detailed history of the breed.
6. List the difference, distinction and details that are specific for that breed in comparison to other breeds in the vicinity or elsewhere.
7. Submit representative photographs of the breed (male, female, young ones and herd / flock).
8. Submit a list of the registered animals of the breed that are conforming the breed standards laid out by the applicant or his organization.
9. The breed must have completed a minimum of 10 generations.
10. Submit letters from at least three different breeders/owners of the breed, explaining:

- Why they believe it should become a recognized breed?
- How long they have been breeding the breed?
- Spell out the reasons for recognition of the breed as a separate identity.
- What has been done to establish this breed- breeding strategies, parental stock etc?
- What are the suggestions to further improve this breed in a long term perspective?
- What makes this breed clearly different and distinctive from all other breeds?

(Source: National Bureau of Animal Genetic Resources (NBAGR), Karnal)

Copyright with the NAHEP-IDP, SKUAST-Jammu

Frequently Asked Questions (FAQs)

1. What is a Patent?

A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

2. What is the term of a patent in the Indian system?

The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty(PCT), the term of patent will be 20 years from the international filing date accorded under PCT.

3. Which Act governs the patent system in India?

The patent system in India is governed by the Patents Act, 1970 (No.39 of 1970) as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003. The Patent Rules are regularly amended in consonance with the changing environment, most recent being in 2016.

4. Does Indian Patent give protection worldwide?

No. Patent protection is a territorial right and therefore it is effective only within the territory of India. There is no concept of global patent. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries or under PCT, within or before expiry of twelve months from the filing date in India. Patents should be obtained in each country where the applicant requires protection of his invention.

5. What can be patented?

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non- patentable under sections 3 and 4 of the Act.

6. What is the criteria of patentability?

An invention is patentable subject matter if it meets the following criteria -

- i) It should be novel.
- ii) It should have inventive step or it must be non-obvious
- iii) It should be capable of Industrial application.
- iv) It should not attract the provisions of section 3 and 4 of the Patents Act 1970.

7. What types of inventions are not patentable in India?

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations:

- i. an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- ii. an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- iii. the mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- iv. the mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;

Explanation: For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regards to efficacy.

- i. A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- ii. The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- iii. A method of agriculture or horticulture;
- iv. Any process for medicinal, surgical, curative, prophylactic (diagnostic, therapeutic) or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- v. Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- vi. A mathematical or business method or a computer program *per se* or algorithms;
- vii. A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- viii. A mere scheme or rule or method of performing mental act or method of playing game;
- ix. A presentation of information;
- x. Topography of integrated circuits;
- xi. An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components;
- xii. Inventions relating to atomic energy;

8. When should an application for a patent be filed?

An application for a patent can be filed at the earliest possible date and should not be delayed. An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention. Delay in filing an application may entail some risks such as (i) some other inventor might file a patent application on the said invention and (ii) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

9. Can any invention be patented after publication or display in the public exhibition?

Generally, an invention which has been either published or publicly displayed cannot be patented as such publication or public display leads to lack of novelty. However, under certain circumstances, the Patents Act provides a **grace period of 12 months** for filing of patent application from the date of its publication in a journal or its public display in an exhibition organised by the Government or disclosure before any learned society or published by applicant. The detailed conditions are provided under Chapter VI of the Act (Section 29-34).

10. Does the Patent Office keep information of the invention secret?

Yes. All the patent applications are kept secret upto 18 months from the date of filing or priority date whichever is earlier and thereafter they are published in the Official Journal of the Patent Office which is published every week and also available on the IPO website. After its publication, public can inspect the documents and also may take the photocopy thereof on payment of the fee as prescribed.

11. Is it necessary to visit the Indian Patent Office to transact any business relating to patent application?

It is not necessary to visit the patent office to file the application as online filing facility is provided. Only in case the application is required to be filed offline, the same can be filed physically at the counter of the Office. Moreover, all the communications with the office are made through emails. However, hearing proceedings relating to patent application can be attended with prior appointment on any working day during prosecution stage.

12. Where can one find the information relating to published/ granted patent application?

The information relating to the patent application is published in the Patent office Journal issued on every Friday. This is also available in electronic form on the website of the Patent Office, www.ipindia.nic.in.

FILING RELATED INFORMATION:

13. Who can apply for a patent?

A patent application can be filed either by true and first inventor or his assignee, either alone or jointly with any other person. However, legal representative of any deceased person can also make an application for patent.

14. How can I apply for a patent?

A patent application can be filed with Indian Patent Office either with provisional specification or with complete specification along with fee as prescribed in schedule I. In case the application is filed with provisional specification, then one has to file complete specification within 12 months from the date of filing of the provisional application. There is no further extension of time to file complete specification after expiry of said period.

15. Is there provision for filing patent application electronically by online system?

Yes, one can file patent applications through comprehensive online filing system at <https://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin>. More information for filing online application is available on the website of Patent Office i.e. www.ipindia.nic.in.

16. Is there any jurisdiction for filing patent application in India?

Yes, India has four patent offices located at Kolkata, New Delhi, Mumbai and Chennai.

Each office has a separate territorial jurisdiction. The appropriate office for all proceedings including filing of the application depends normally where the applicant/first mentioned applicant resides/has domicile/has place of business/has origin of invention. In case of foreign applicants, it depends on the address for service in India given by such applicant.

17. When can an applicant withdraw patent application in India?

In India, a patent application can be withdrawn in the following ways:

- A request for the withdrawal of the application can be filed within 15 months of the date of filing or date of priority, whichever is earlier and accordingly the application will not be published and be treated as —withdrawn.
- An applicant can withdraw the application before the issuance of the First Examination Report. However, on withdrawal of the application, applicant can claim a refund of up to 90% of examination fees.
- An applicant can withdraw the application any time after its filing but before the grant of patent by making a request. There is no fee for withdrawing the application. And also there is no refund of examination fee.

18. What are the types of applications?

The types of applications that can be filed are:

A. PROVISIONAL APPLICATION

Indian Patent Law follows first to file system. A provisional application is an application which can be filed if the invention is still under experimentation stage. Filing a provisional specification provides the **advantage to the inventor since it helps** in establishing a —priority| date of the invention.

Further, the inventor gets 12 months' time to fully develop the invention and ascertain its market potential and to file the complete specification.

B. ORDINARY APPLICATION

An application for patent filed in the Patent Office without claiming any priority either in a convention country or without any reference to any other earlier application under process in the office. Such type of application is known as an ordinary application.

C. CONVENTION APPLICATION

An application for patent filed in the Patent Office, claiming a priority date based on the same or substantially similar application filed in one or more of the convention countries is known as a convention application. In order to get convention status, an applicant should file the application in the Indian Patent Office within 12 months from the date of first filing of a similar application in the convention country.

D. PCT INTERNATIONAL APPLICATION

An Application filed in India as Receiving Office (RO) under Patent Cooperation Treaty is an international application which can be filed in more than 150 countries by a single application.

E. PCT NATIONAL PHASE APPLICATION

When an international application is made according to PCT designating India, an applicant can file the national phase application in India within 31 months from the international filing date or the priority date, whichever is earlier.

F. PATENT OF ADDITION

When an invention is a slight modification of the earlier invention for which he has already applied for or has obtained patent, the applicant can go for patent of addition if the modification in the invention is new. One of the benefits of filing patent of addition is that there is no need to pay separate renewal fee for the patent of addition during the term of the main patent and it expires along with the main patent.

G. DIVISIONAL APPLICATION

When an application claims more than one invention, the applicant on his own or to meet the official objection on the ground of plurality or distinct invention may divide the application and file two or more applications, as the case may be for each of the inventions. This type of application, divided out of the parent one, is known as a Divisional Application. The priority date for all the divisional applications will be the same as that of the main (the Parent) Application (Ante-dating).

19. Is it necessary to file a provisional application?

Generally, when an invention is not complete an application can be filed with provisional specification which is known as provisional application. This is useful in establishing a priority date for your invention. Moreover, it also gives sufficient time to the applicant to assess and evaluate the market potential of his invention before filing complete specification. However, it is not necessary to file an application with provisional specification and one can file application directly with complete specification.

20. When is an application for patent published?

Every application for patent is published after expiry of 18 months from the date of its filing or priority date whichever is earlier. However, following applications are not published.

- A. Application in which secrecy direction is imposed
- B. Application which has been abandoned u/s 9(1) and i.e when a provisional application has been filed and the complete application has not been filed with 12 months from the filing of the provisional application
- C. Application which has been withdrawn 3 months prior to 18 months

21. Is there any provision in the Patents Act for early publication?

Yes, the applicant can make a request for early publication in Form 9 along with the prescribed fee. After receiving such request the Patent Office publishes such application within a period of one month provided the invention contained thereon does not relate to Atomic energy or Defence purpose.

22. What are the facilities available for an applicant to pay the fees?

The applicant can pay the fee either at cash counter or online through a comprehensive payment gate way which includes net banking, payment by Debit/Credit card. More than 70 banks are part of this payment gateway.

23. What are the forms required to be filled for filing of a patent application in India?

Generally, in order to file an application, an applicant is required to file Form 1 which is a request for filing an application and Form 2 which is either a provisional or complete specification or drawings if any. In addition to these, an abstract of the invention is also required. If the application is filed through a registered patent agent, a power of authority in favour of the said agent in Form 26 is also required. However, depending upon various circumstances, following forms may also be required. The application can be examined only after receipt of request for examination on Form 18. The important forms are listed below:

Form 1	<ul style="list-style-type: none"> •Application for grant of a patent •Contains legal information such as name, contact details of the applicant, inventors, priority date etc. To be accompanied by provisional or complete specification (Form 2) Provisional or Complete specification
Form 2	<ul style="list-style-type: none"> •Contains invention including Title, Field, background prior art, drawbacks of the known inventions, description, experimental results, Drawings, Abstract of the invention etc. Claims, in the complete specification are legal boundaries of invention
Form 3	<ul style="list-style-type: none"> •Statement and undertaking for foreign applications •Information regarding the details of the invention if filed abroad and the undertaking to inform the Patent Office as and when he files the same abroad.
Form 5	<ul style="list-style-type: none"> •Declaration as to inventorship •The applicant discloses the names of all the inventors. This is generally used when a complete specification is filed (within 12 months) after provisional specification.
Form 18	<ul style="list-style-type: none"> •Request for examination of a patent application •This form can be filed anytime within 48 months of filing an application. It can be filed even at the time of filing the patent application. Without filing this form the patent specification will not be examined.
Form 18A	<ul style="list-style-type: none"> •Request for expedited examination of a patent application can be filed if, •The applicant indicates India as the competent International Searching Authority or elects India as an International Preliminary Examining Authority in the corresponding international application; or •the applicant is a startup.
Form 26	<ul style="list-style-type: none"> •Form of authorization of a Patent Agent •This form is required when the applicant is authorizing a patent agent to act before the patent office on his/her behalf
Form 9	<ul style="list-style-type: none"> •Request for early publication •This form is required to be filled if the applicant wants that his application is published before 18 months of filing

24. What time lines are to be adhered to while prosecuting a patent application in India?

Following are some of the important time lines to be observed by an applicant during the prosecution of a patent application.

25. Is patent application once filed examined automatically?

A patent application is not examined automatically after its filing. The examination is done only after receipt of the request of examination in Form 18 either from the applicant or from third party or Form 18A for expedited examination (under conditions as prescribed in the Rules).

26. When can the request for examination be filed?

The request for examination can be filed within a period of 48 months from the date of priority or date of filing of the application whichever is earlier. For more details kindly refer to rule 24B of the Patents Rules 2003 as amended.

27. Is there any provision for expedited examination?

Yes, as per Rule 24C of the Patent Rules as amended in 2016, a request for expedited examination can be filed with the prescribed fees in Form 18A along

with the fee as specified in the first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24B on any of the following grounds, namely:-that India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application; or that the applicant is a startup.

28. What happens to a patent application once it is examined?

After examination, the Patent office issues an examination report to the applicant which is generally known as First Examination Report (FER). Thereafter the applicant is required to comply with the requirements within a period of 6 months from the date of FER which can be extended by 3 months. In case, the application is found to be in order for grant, the patent is granted, provided there no pre-grant opposition is filed or pending. A letter patent is issued to the applicant. However, in case a pre-grant opposition is pending, the further action is taken after disposition of the pre-grant opposition.

29. What happens when applicant is not able to meet the requirement within the prescribed time?

If the applicant does not file a reply within 6 months or does not take an extension of 3 months, the application is deemed to have been abandoned.

30. Is there provision for extension beyond time limit of 9 months?

No, there is no provision for extension of time beyond the said period.

31. Does an applicant get an opportunity of being heard before his application is refused?

If applicant has not complied with the requirements within the prescribed time, the Controller shall provide an opportunity of being heard to the applicant before refusing his application if a request for such hearing has been made by the applicant at least 10 days in advance before expiry of the statutory period.

32. What is time limit for filing the representation for pre-grant opposition?

A representation for pre-grant opposition under section 25(1) of Patents Act, 1970 can be filed, on Form 7A within six months from the date of publication of the application u/s 11A or before the grant of patent.

33. Is there any fee for filing such representation for pre-grant opposition?

No, there is no fee for filing representation for pre-grant opposition? This can be filed by any person.

34. What are the grounds for filing representation for pre-grant opposition?

The grounds for filing pre-grant opposition are contained in section 25(1) of the Patents Act 1970.

35. Is it possible to file pre-grant opposition even though there is no request for examination filed?

Yes, it is possible to file representation for pre-grant opposition even though there is no request for examination has been filed. However, the representation will be considered only when a request for examination is received within the prescribed period.

36. What is the time limit for filing post-grant opposition in the patent office?

The time for filing post-grant opposition is 12 months from the date of publication of the grant of patent in the official journal of the patent office.

37. Is there any fee for filing post-grant opposition?

Yes, the post grant opposition has to be filed in the prescribed Form 7 along with prescribed fees as mentioned in First Schedule in Patents Rules 2003.. The post grant opposition has to be filed by the person interested and not by any other person.

38. What are the grounds for filing the post grant opposition?

The grounds for filing post-grant opposition are contained in section 25(2) of the Patents Act 1970.

Other Information:

39. What are the e-filing facilities available at www.ipindia.nic.in?

The following are the e-filing facilities available for an applicant:

- Comprehensive e-filing facility for Patents and Designs,
- Comprehensive payment gate way including net banking, payment by Debit/ Credit card
- Web based Simple Registration process and filing procedure
- Real time Validations with IPO Patent database
- Manage User Profile and Folders
- 10% fee reduction on online filing compared to offline filing to promote online filing.
- Request for expedited examination- only through e-filing

40. Does patent office help in finding users for patent?

The Patent Office has no role beyond grant of patent. Since patents are private rights the patent owner is responsible for commercializing the patent either himself or through licensee. However, the information relating to grant of patent is published in the Patent Office journal and also published on the Patent Office website which is accessible to the public worldwide. This certainly may help the applicant to attract potential user or licensee. The patent office also compiles and updates a list of patents which are lapsed/ceased in India.

41. Is Indian patent database searchable? How can one find out whether an invention is already patented?

The person concerned can perform a search free of cost on Indian Patent

database consisting of published patent applications and granted patents. The said database is available on Patent Office website as **in PASS** <http://ipindiaseservices.gov.in/publicsearch>. Further, the website (www.ipindia.nic.in) contains innovative tools under **DYNAMIC UTILITIES** which gives information about the patent applications at various stages of processing.

42. Is there any difference in the amount of fees to be paid by an individual or a legal entity for filing a patent application?

Yes, the Patent Rules provides for different fee for individuals/Startups, SME's and legal entity. Details can be seen in the First Schedule of the Patents Rules, 2003 as amended from time to time.

43. What are obligations of the patentee after the grant of patent?

After the grant of patent, every patentee has to maintain the patent by paying renewal fee every year as prescribed in the schedule I. For first two years, there is no renewal fee. The renewal fee is payable from 3rd year onwards. In case the renewal fee is not paid the patent will be ceased.

44. Can the patentee pay renewal fee at a time or has to pay every year?

The patentee has choice to pay the renewal fees every year or he can pay in lump sum as well.

45. When can a patent be restored after its cessation?

A request for restoration of patent can be filed within 18 months from the date of cessation of patent along with the prescribed fee. After receipt of the request the matter is notified in the official journal for further processing of the request.

46. What is meant by patent agent and what are the eligibility criteria of becoming a patent agent?

A Patent agent is a person registered with Indian Patent Office whose name is entered in the patent agent register after being declared qualified in the patent agent examination conducted by the patent office and who is entitled-

- a) to practice before the Controller; and
- b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

47. Eligibility conditions for registration as patent agents are below.-

A person shall be qualified to have his name entered in the register of patent agents if he fulfills the following conditions, namely—

- a. he is a citizen of India;
- b. he has completed the age of 21 years;
- c. he has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition,—

- i) has passed the qualifying examination prescribed for the purpose; or
- ii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity.

48. Is it necessary to engage a registered patent agent for filing an application for patent?

It is not necessary under the patent law to engage a registered patent agent for filing an application for patent. The applicant is free to file an application by himself or through the patent agent. However, an applicant who is not a resident of India is required to file either through the registered patent agent or must give an address for service in India

49. Does the Patent Office help to select a patent attorney or agent to make patent search or to prepare and prosecute patent application?

No, Patent Office does not make any recommendations regarding selection of a patent agent. However, a list of patent agents is maintained by the office. This list can also be viewed at Patent Office website. The applicant is free to appoint any patent agent from the said list.

50. Does the patent office ascertain fees charged by the patent agents for their services?

No. This is a matter between the applicant and the patent agent. The Patent Office has no role in ascertaining the fee charged by a patent agent. However, for assisting startups to file the patent applications, the Patent Office has enrolled the facilitators and prescribed a certain limit of fee reimbursement to be paid to the facilitators under the SIPP scheme. The details of the scheme can be seen on www.ipindia.nic.in

51. Is it mandatory to obtain prior permission from the Patent Office to file application for patent outside India or abroad?

Ordinarily, under the following circumstances, it is not necessary to obtain prior permission from the Patent Office to file patent application abroad:

- a) Applicant is not Indian resident and invention is originated abroad about.
- b) If the applicant is Indian resident and filed patent application has been in India before filing the application outside India and six weeks period is over from that date.
- c) The invention does not belong to Atomic Energy or defence purpose.

52. Under what circumstances, it is necessary to obtain a prior permission from the Patent Office?

Residents of India require prior permission to apply for patents outside India under section 39 of the Patents Act, 1970 under following circumstances.

- a) The applicant or inventor is Indian resident,
- b) Applicant does not wish to file patent application in India prior to filing outside India.
- c) If the applicant is Indian resident, a patent application has been filed in India and six weeks period is not yet over from that date.

- d) The invention relates to atomic energy or defence purpose.
- e) However if the invention is relevant for Defence or Atomic Energy purpose, no permission shall be granted without the consent of Central Government.

53. Is there any additional requirement for filing of patent applications in respect of microbiological inventions?

In addition to the various forms required to be filed at the time of filing the patent application, the applicant is also required to deposit the new strain of a microorganism if used in the invention disclosed in the patent specification, in a recognized depository which assigns a registration number to the deposited microorganism, before filing for the patent application. This number needs to be quoted in the patent application.

54. Are there any specific instructions to inventors in respect of filing for patent applications where their invention lies in biological material?

The Patents Act, 1970 as well as the Biological Diversity Act, 2002 stipulates that the source and geographical origin of the biological material should be clearly disclosed in the patent specification. Further, according to the provision of Section 6 of the Biological Diversity Act, if the biological material used in the invention is from India, permission from the National Biological Authority has to be obtained by the applicant, and the same should be submitted to the Patent Office before the grant of patent.

55. Is it essential to deposit biological material in the international depository authority?

If the invention uses a biological material which is new, it is essential to deposit the same in the International Depository Authority (IDA) prior to the filing of the application in India in order to supplement the description. The description in the specification should contain the name and address of the International Depository Authority and, date and number of deposition of Biological material. If such biological material is already known, in such case it is not essential to deposit the same. For more details log on to www.ipindia.nic.in.

56. Is there any International Depository Authority in India?

Yes, there is an International Depository Authority in India located at Chandigarh which is known as Institute of Microbial Technology (IMTECH). The more details regarding the said depository authority can be had on its website <http://imtech.res.in/>

57. Under what circumstances fees paid can be refunded?

As per the Amendments in Patents Act 2016, sub-rule (4) of rule 7 provides that if the Controller is satisfied that during the process of online payment, the fees was paid more than once for the same proceedings, the excess fees shall be refunded. The newly inserted sub-rule 4A provides that in case of withdrawal of patent applications for which request for examination has been filed but first

statement of objections have not been issued, 90% of fees for non-expedited or expedited request for examination may be refunded to Applicant if he/she requests in newly inserted form 29 (which requires zero fees).

58. Have any new forms been introduced?

Forms 18A, 29 and 30 have been newly introduced in view of Patents Act, 1970 Amendment 2016.

59. What are the changes made to the submission of the Power of attorneys?

Now, the deadline for filing a power of attorney is 3 months from the date of filing of patent application and failing of which no action shall be taken on such applications or document till such deficiency is removed.

60. Are there any restrictions with respect to the hearing adjournments?

The Amended rules, 2016 provides for restriction on the number of hearing adjournments to two and each adjournment shall not be more than thirty days each. These adjournments have to be requested at least three days before the date of hearing.

61. Have there been any amendments with respect to national phase applications based on the international patent application?

The rule 20 has been amended to explain an application corresponding to an International application which clarifies that an application corresponding to an international application under PCT can include amendments made under Article 19 or article 34 of PCT, provided that the applicant while filing such application may delete a claim in accordance with Rule 14.

62. What are the instructions to patent agents regarding submission of all documents by electronic transmission?

Now Patent Agents are required to submit even those documents by electronic transmission that need to be submitted in original i.e. through scanned copies and then mandatorily submit the original documents within period of 15 days.

Following documents have to be submitted in original by patent agent after filing them electronically:

- i. The Authorization of Patent Agent or Power of Attorney
- ii. Proof of the right to make an application
- iii. Deed of assignment, certificate regarding change in name of the applicant, license agreement
- iv. Declaration of inventor-ship v. Priority document

63. What is start up criteria?

Start-up means an entity, incorporated or registered in India under the Start-up India: Stand-Up India” initiative of the Government of India.

64. What are the benefits provided by the Government of India to Start up applicants for filing patent applications?

Government of India provides the following benefits to Start Ups in filing patent application in India under Scheme for Facilitating Start-ups Intellectual Property Protection (SIPP):

- An entity qualifying as a startup⁴ under Stand-Up India initiative of the Government of India can avail the facility of **expedited examination**.
- The Government reimburses the expenditure to the facilitator who assists the startup for filing and prosecuting the patent application to the extent of Rs.10,000/-

65. What is the relevant date from the infringement perspective?

As per section 11A, the applicant shall have privileges as if patent was granted on the date of publication of application. Thus, in case of suit for infringement, the patent owner can claim damages from the date of publication of patent application or date of infringement whichever is earlier. However the suit for infringement can be filed only after a patent is granted.

66. What are the rights of a patentee once the patent is granted?

A patentee enjoys the exclusive right to make and use the patented invention. The patentee also has the right to assign the patent, grant licences, or otherwise deal with the patent, for any consideration. These rights, created by statute, are circumscribed by various conditions and limitations as prescribed under the Patents Act.1970.

67. Is it necessary to show working of a patent after grant?

Under the provisions of section 146, every patentee or a licensee, is required to furnish the information relating to working of patent, statement as to the extent to which the patented invention has been worked. This must be submitted on Form 27 by 31 March each year for the previous year ending 31 December.

68. What is the Patent Cooperation Treaty (PCT)?

The PCT is an international treaty with more than 150 Contracting States which are bound with certain formal requirements set out in the Treaty and Regulations. The PCT makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single-international patent application instead of filing several separate national or regional patent applications however, granting of patents remains under the control of the national or regional patent offices after the corresponding —national phase application has been filed and the national phase application is assessed as per patent law of that jurisdiction.

As per Indian Patent Act 1970 as amended and the Patents Rules 2003 as amended by (amendment) rules 2016, any PCT international application may be filed designating India and it shall be deemed to be an application if the corresponding national phase application has also been filed.

69. Can an applicant opt for Indian Patent Office as ISA/IPEA for the international search of PCT application?

Yes, the Indian Patent Office was recognized as an International Searching Authority and International Preliminary Examining Authority under the PCT and started functioning from 15th October 2013.

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Note: Patent Facilitating Centre (PFC) set up by Department of Science and Technology under Technology Information Forecasting and Assessment Council (TIFAC) in 1995. PFC is created as a single window facility to service large ALL INDIA clientele. The majority of the material of this booklet is an excerpts of the material of PFC, TIFAC India and is duly acknowledge.

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