



## **Steps and Procedure for getting Patent in India**

To understand the Steps and Procedure for getting a Patent in India in a clearer way let's assume, 3 parties as below,

1. You (the inventor): who has an innovative idea to patent
2. Patent professional (**APSIT IPR CELL**)
3. Patent office/ e-Filing (controller, examiner and other staff)

We would be seeing what the involvement of each one of them was at every step while getting patent. Along the way, we would also be seeing relevant forms and costs involved at each stage. So, let's get started.

### **Step 1: Idea incubation phase**

#### **idea incubation phase**

Every creation started with a thought. This step involves effectively capturing your concept, gaining clarity on each component of the original concept, and filling in the gaps with suitable study and experimentation.

Include pictures, schematics, or sketches that demonstrate how the invention works. The drawings and diagrams should be created in such a way that visual illustrations can better explain how the innovation works. They play a crucial function in comprehending your creation.

You do a preliminary search when you have fully captured your original concept with all technical specifications. The goal of this search is to obtain answers to queries that will help you create a functioning disclosure of your invention.

#### **Some of the questions in the invention disclosure form would be:**

- 1) What is the nature of my innovation or idea? What is the mechanism behind it?
- 2) What is the problem that my creative concept solves?
- 3) What is my invention's field of application?
- 4) What are the benefits of my novel idea?
- 5) What are the components or parts of my novel idea?
- 6) Is it possible for me to create a block diagram, gadget, flowchart, or drawing that better describes my invention?
- 7) What are the advantages of my innovation above previous art knowledge?
- 8) Who are your rivals, and what products or services do they offer...?

For an inventor, this is the most crucial step in which a concept is transformed from a concept to a workable invention disclosure that can be discussed with a patent agency or attorney. We offer a detailed section regarding activities to do and worksheets for this key part. Refer to the "Idea incubation period" section.



## **Responsibilities**

**Inventor-** Collect relevant details on an innovative idea and create comprehensive invention disclosure

**Patent professional-** Receive invention disclosure, perform patentability search, provide opinion and draft patent application

**Patent office-** patent office/ e-filing

**Costs-** There are no costs involved in the idea incubation phase.

## **The Outcome of this step:**

The outcome of the idea incubation phase is the creation of a working invention disclosure that covers all aspects of your invention completely. And which is ready to be shared with a patent professional.

## **Step 2: Patentability search (optional step)**

In this step, the patent agent or attorney who is working on your invention helps you in finding out whether or not your invention meets all patentability criteria, which are

- Novelty
- Non-obviousness
- Industrial application

The patentability search aims to determine the innovation's uniqueness and non-obviousness. It also finds any possible previous arts (publicly known) relevant to your invention, and based on the results, a patent professional's opinion on the patentability of your invention may be supplied.

The patentability opinion may be favourable, negative, or neutral based on the findings obtained and examined in a patentability search report. A favourable patentability opinion suggests that you have a strong possibility of getting your innovation patent awarded.

The patentability report and opinion assist you in deciding whether to pursue a patent or not; chances are that what you believed was innovative has previously been patented or is known to the public in some way. As a result, this report saves the inventor a lot of time, effort, and money by assisting him in deciding whether or not to proceed with the patent application procedure.

## **Responsibilities**

**Inventor:** Inventor in India answering questions by a patent professional, reviewing a patentability search report, and closest possible prior arts.



**Patent professional:** In India, understand invention disclosure and performing patentability search, prepare a report and give an opinion on patentability.

**Patent office:** patent office/ e-filing

**Costs:** the professional fees for a patent professional can range from Rs. 1000 to Rs. 2000 for performing a patentability search (free for APSIT Students & Staff).

**Time:** the time required depends upon the patentable invention.

**The outcome of this step:**

The outcome of this patentability search report is:

1. When our invention is compared to the closest potential prior art obtained in the patentability search report, the inventive step and new feature will be discovered.
2. When our invention is compared to the closest potential prior art obtained in the patentability search report, the inventive step and new feature will be discovered.
3. The patentability search report will provide you with an overall view of the state of the art, which is the present stage of the technology, and you may discover certain white spots in which you may do more study and development.
4. The inventive step discovered through a patentability search may be used to help write a patent application, particularly patent claims, so that our patent application has a strong chance of passing the examination stage and being given a patent.
5. If the patentability assessment is negative, it saves a lot of money and time that would have been spent unnecessarily pursuing the patent filing procedure and, ultimately, having the application denied.

**Note:** In spite of all these benefits of the patentability search, this is an **optional step**. You can choose to directly file the patent application without going for patentability search, which is Not recommended by the way.

### **Step 3: Patent drafting/writing**

Patent drafting is the process of creating a patent application based on your invention disclosure and patentability search report.

Patent drafting/writing is a specialist profession that takes years of skill and knowledge of patent law in order to prepare a solid patent application. Simply read some of your domain's awarded patents to get an idea. The patent is a techno-legal document that contains both technical and legal information. Writing a patent as a project report or a technical thesis and submitting it to the patent office on your own would be a mistake that might result in your patent being denied. When drafting claims, writing thorough descriptions, writing multiple embodiments of the invention, detailing inventive methods, and so on, there are numerous rules to follow and care to take.

This is one of the most crucial stages in the patent life cycle, and a solid patent application produced by an experienced patent agent/attorney should survive not just the examination phase until the patent is granted, but also the commercialization phase, when actual money is



produced by licensing or selling patent rights, and where rivals should not be able to get around your patent. Writing such a patent application is a skill.

## **Responsibilities**

**Inventor:** Inventor in India answering questions by a patent professional, identifying the inventive step and providing detailed disclosure if required. Review the patent application.

**Patent Professional:** Patent agent or attorney in India writing a patent application that provides maximum possible protection to an invention, following all rules for writing a patent application.

**Patent office:** patent office/ e-filing

**Costs:** the professional fees for a patent professional can range from Rs. 7000 to Rs 10000 for performing a patentability search (**free for APSIT Students & Staff**)

**Time:** the time required is about 15 to 20 working days (**Depends upon the meeting with the inventor**)

## **The outcome of this step:**

The outcome of this patent drafting stage is:

- A patent application that has been finished and may be submitted with the patent office
- Patent application that has been well-prepared by an experienced patent agent/attorney and has survived the examination phase, as well as the patent grant and commercialization phase.

## **Step 4: Filing patent application**

Filing a patent application into the patent office:

You must decide whether to file a provisional patent application or a full-patent application based on the readiness of your idea. If you don't have the whole invention yet and need further research and development, but don't want to miss out on the priority date for submitting a patent application, a provisional patent application is the way to go. There are many advantages for filing a provisional patent application.

### **Provisional patent application:**

- When to go for a provisional patent application
- Advantages, costs
- elements of the provisional patent application
- mistakes to avoid

Patents are territorial in nature, thus if you submit one in India, you will only receive protection in India. Then you can't ban people from using inventions outside of India. If you want to



protect your innovation in numerous countries, you'll need to file a patent application with the help of a patent agent or attorney.

### **International patent application:**

- different options and routes available
- strategies to go about international patent filing
- Patent Cooperation Treaty (PCT) application
- Paris convention and other routes

### **Responsibilities**

**Inventor:** Inventor in India reviewing patent application. Signing formalities like forms (power of attorney) to submit along with the patent application.

**Patent Professional:** Patent agent or attorney in India preparing patent application for filing. Recommending the best filing route and options for an international patent application (if required). Submitting relevant forms and fees in a prescribed manner.

**Patent office:** Receive the patent application and provide the receipt along with date and time of filing the patent application.

**Costs:** Government forms and fees: The relevant form for the patent application is Form 1.

There are many things needed to consider before giving exact fees amount, as it depends on the number of sheets in the patent specification, number of claims etc. but below are approximate costs for this stage.

| <b>Inventors</b>                | <b>Individual inventors</b> | <b>Small Entity</b> | <b>Other than small entity</b> |
|---------------------------------|-----------------------------|---------------------|--------------------------------|
| <b>Application fees<br/>INR</b> | 1600                        | 4000                | 8000                           |

**Time:** The time required is less than 1 day (if filed online)

**Note:** The above-mentioned amount is the minimum amount as per the application. Amount may be as per document pages at the time of filing.

### **The outcome of this step:**

The outcome of this filing patent application is:

- You get a receipt for filing a patent application with the invention title, your name, and the time and date of filing from a government patent office.
- Now that your innovation is safe and you've established a priority date for it, you don't have to be concerned about its secrecy or safety.
- The patent application will proceed to the next phase based on the forms, requests, and fees filed in accordance with the requirements.



## **Step 5: Publication of application**

In most cases, the application is automatically published 18 months after it is filed. The inventor is not compelled to pay any fees or take any action. If you don't want to wait until the 18-month period has passed, you can request an early publishing with the appropriate payments. The request for early publishing can be made (optional step) with form 9 and payment of the prescribed fee as shown in the table below; in general, the patent application is published within a month of receiving the request for early publication.

### **Responsibilities**

**Inventor:** Inventor in India, the, the optional step of filing early publication request along with Form 9 and Fees.

**Patent Professional:** Patent agent or attorney in India optional step of filing early publication request along with Form 9 and Fees.

**Patent office:** The patent application is automatically published, or if requested, early publication is done.

### **Government forms and fees:**

Form 9. Remember, there are no fees for publication of the application automatically after 18 months of the filing date. The fees mentioned below are an optional step if you want to go for early publication request.

| <b>Inventors</b>                     | <b>Individual inventors</b> | <b>Small Entity</b> | <b>Other than small entity</b> |
|--------------------------------------|-----------------------------|---------------------|--------------------------------|
| <b>Request for early publication</b> | 2500                        | 6250                | 12500                          |

## **Step 6: Request for examination (RFE)**

The patent application is only reviewed once a request for examination (RFE) is received. Within 48 months of the filing date or priority date, the inventor/applicant must file a request for examination (RFE). Form 18 is used to create this RFE, and the government costs are listed in the table below.

When the controller receives this request, he or she assigns your patent application to a patent examiner, who conducts searches to determine if the invention is patentable (as per patentability criteria). The examiner then produces the patent application's first examination report (FER). Everything happening to the patent application before the grant of the patent is generally called a patent prosecution.

The examiner's initial examination report to the controller usually includes previous art (documents that existed before the date of filing) that are comparable to the claimed invention,



as well as any objections expressed about the invention's patentability criteria. You (inventor) / patent applicant will receive an examination report (with objections).

## **Responsibilities**

**Inventor:** Inventor in India, the patent agent or patent attorney makes a request for examination on behalf of you. Or request for an Expedited examination with form 18 if applicable.

**Patent Professional:** The patent agent or attorney in India's request for examination is submitted with Form 18 and Fees. Or request for an Expedited examination with form 18 if applicable.

**Patent office:** Receive request for examination and examiner check patent application for patentability and other criteria and generates the first examination report.

## **Government forms and fees:**

Form 18. The fees for request for examination RFE is as below.

| <b>Inventors</b>               | <b>Individual inventors</b> | <b>Small Entity</b> | <b>Other than small entity</b> |
|--------------------------------|-----------------------------|---------------------|--------------------------------|
| <b>Request for examination</b> | 4000                        | 10000               | 20000                          |

## **Step 7: Response to objections**

On the basis of the examination report, the majority of patent applicants (inventors) will get some form of objection. The best thing to do is work with a patent agent/attorney to evaluate the examination report and come up with a solution to the objections highlighted in the report. This is an opportunity for an inventor to explain the novelty and non-novelty of his or her creation based on the type of innovation, Objections received.

You (as inventor/applicant) have 12 months from the date on which the First Examination Report is given to you to respond to the objection made. The inventor and the patent agent draught and transmit a response to the objections, attempting to persuade the controller that his invention is patentable and meets all patentability requirements.

Accepts the objections and adjusts the patent application as indicated in the First Examination Report, or accepts the objections and adjusts the patent application as indicated in the First Examination Report.

If the controller is pleased with the response to the objections or the revised patent application. The patent is given to you (inventor) / applicant as soon as feasible after discovering the patent application in order of grant! The grant is entered in the patent register with the seal of the patent office and the date of the award.



### **Responsibilities**

**Inventor:** Inventor in India helps patent agent in technical matters of invention (If required) with drafting response for objections.

**Patent Professional:** Patent agent or attorney in India draft the response to objections raised with the help of the inventor. Or amend the patent application accordingly. Request for hearing if desired.

**Patent office:** Receive response of objections and decide whether a hearing is needed and whether to grant a patent or not.

**Professional Fees:** The patent agent/attorney may charge a professional fee to respond to objections based on the complexity of the objections and the number of objections received.

### **Step 8: Grant of patent**

Once determined that the application meets all patentability conditions, it will be placed in line for award. The patent is given to you (inventor) / applicant when it is feasible with the seal from the patent office, and the patent award is reported in the patent journal, which is published on a regular basis.

### **Responsibilities**

**Inventor:** Inventor in India, the patent is granted to you. As per section 48, you get the right to exclude others from using, selling, offering for sale, importing your patented invention.

**Patent Professional:** Patent agent or attorney in India: Inform the inventor about procedures, renewals and communication to the patent office after the grant of the patent.

**Patent office:** Grant, the patent for the invention or reject the patent based on the response to objections raised. Notify grant of patent in patent journal.