

# Procedure for Obtaining Patents

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Intellectual Property Rights are rights recognized by the Trade Related Intellectual Property Rights agreement (TRIPS) and governed by the WTO (World Trading Organization). Patent is an exclusive right conferred by the Patent Office on an inventor to exploit his invention for a limited period of time. During this limited period the inventor under the patent law of that country gets the exclusive right for the use of the invention. Only a patent can certify that the invention is original. To get the patent, the patent holder has to disclose its invention into the public domain for the common good. Furthermore, when a patent's term has expired, the public record ensures that the patentee's idea is not lost to humanity. The disclosure is also required for the people who are skilled in the particular art to find out whether the specification discloses the best method. The best method theory may be stated as the best way know to the inventor at the time of the filling of the patent application to arrive at the invention. In the present article, procedure for obtaining patent has been discussed in brief.

## INTRODUCTION<sup>1-5</sup>

Intellectual property rights are customarily divided into two main areas. They are:

1. Copyright and related rights.
2. Industrial Property.

### Copyright and Related Rights

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author after the day it is published.

Also protected through copyright and related (sometimes referred to as "neighboring") rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations. The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

### Industrial Property

Industrial property can usefully be divided into two main areas:

One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical-origin).

The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.

Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In these category fall inventions (protected by patents), industrial designs and trade secrets.

The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities. A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing. The protection is usually given for a finite term (typically 20 years in the case of patents).

While the basic social objectives of intellectual property protection are as outlined above, it should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders.

### Patents<sup>5-16</sup>

Patent is an intellectual property right relating to inventions and it's the grant of exclusive right, for limited period, provided by the Government/statute to the patentee, in exchange of full disclosure of his invention,

for excluding others, from making, using, selling, importing the patented product or process producing that product for those purposes. The purpose of this system is to encourage inventions by promoting their promotion and utilization so as to contribute to the development of industries, which in turn, contributes to the promotion of technological innovation and to the transfer and dissemination of technology. Under the system, Patents ensure property rights for the invention for which patent have been granted, which may be extremely valuable to an individual or a company. Patents shall be available and patent rights enjoyable without discrimination with respect to the place of invention, the field of technology and whether products are imported or locally produced.

The trends of patents during the last 25 years in India have their roots in the formulation and implementation of the Indian Patent Act 1970, which became effective from 20<sup>th</sup> April 1972. There was a strategic shift from the liberal features of the Indian Patents and Designs Act 1922 to the new regime which introduced restrictive changes related to patenting of inventions especially in the areas of chemical, pharmaceuticals, agrochemicals and foods. The granting of patents for inventions claiming to be substances intended for use or capable of being used as food, medicine or drug or all substances resulting from chemical processes was withdrawn. The conditions for compulsory licensing were also made fairly liberal including the introduction of the concept of "license of right" for patents related to drugs, pharmaceuticals and foods.

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## Types of Patents<sup>3</sup>

1. Ordinary patents.
2. Patents of Addition.
3. Convention applications with priority date, claiming on the basis of filing in convention countries.
4. National Phase applications under PCT.

## What is Patentable Invention?<sup>7</sup>

Under the Patent Act, an invention means "a new product or process involving an inventive step and capable of being made or used in the industry". It means that for the invention to be patentable it should be of technical nature and should meet the following criteria.

Patent don't protect each and every inventor who conceives an invention. The requirements vary in different legal system; certain basic common features do exist. They are-

1. Novelty
2. Utility
3. Inventive step/non-obviousness

### Novelty

An invention to be patentable must be new at the time of invention by the original inventor, that is, it must not be already known to the public /it should not be in the public domain. An invention is new if it has not been a part of any existing state of the art. Novelty basically involves a comparison between the invention in any of its embodiments and the things that is revealed by the prior publication.

### Utility

The next requirement for the patent is utility. Utility is that the purported invention must be capable of industrial application i.e. must perform some function of positive benefit to society. The utility requirement is such that an invention need not be superior to existing products or process. But, it must operate to perform the function and secure the result intended. It is not necessary always to establish the commercial success of the product or process; even a small degree of utility is sufficient.

### Inventive step / Non-obviousness

If an invention is new and useful, it doesn't deserve a patent until satisfying the criteria of non-obviousness. It aims to protect those, which would not be obvious to any person skilled in the art, if they have put their mind to it.

### What is not Patentable?<sup>7,8</sup>

The following are Non-patentable inventions within the meaning of the Act-

- An invention which is frivolous or which claims anything obviously contrary to well established natural law.
- An invention whose 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 environment.
- The mere discovery of a scientific principle or the formulation of an abstract theory (or discovery of living thing or non-living substances occurring in nature).
- 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.
- 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.
- The mere arrangement or rearrangement or duplication of known devices each functioning independent of one another in a known way.
- A method of agriculture or horticulture.
- 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.
- 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.
- A mathematical or business method or a computer programme per se or algorithms.
- A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions.
- A mere scheme or rule or method of performing mental act or method of playing game.
- A presentation of information.
- Topography of integrated circuits.
- An invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.
- Inventions relating to atomic energy and prejudicial to the defense of India.
- In the case of inventions relating to substances prepared or produced by chemical process and substance intended for use or capable of being used as drug and food, no patent will be granted in respect of claims for the substances themselves but claims for the method or processes of manufacture will be patented. Chemical process includes biochemical, biotechnological and micro-biological process.
- Inventions related to atomic energy.

## Inventions and Discoveries<sup>18</sup>

This idea has two different applications. The first is that the patentable subject matter must correspond to the very notion of invention, as opposed to that of discovery. Inventions are practical, new and useful solutions given to technical problems. They are artificial creations that stem from the need to solve technical problems. Discoveries are not the result of creation-even if creativity has been needed to reveal information concealed in nature.

To get patent protection the inventor has to make the following specification in the patent application<sup>19</sup>:

- The title of the invention.
- A full description of the invention and its operation and use and the method by which it is to be performed.
- A disclosure of the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection, if necessary with the help of drawings, examples etc.
- A statement of claim or claims defining the scope of the invention for which protection is sought.

## Application of Patents<sup>8</sup>

1. An application for a patent for an invention may be made by any of the following persons.
  - (a) By any person claiming to be the true and first inventor of the invention.
  - (b) By any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application.
  - (c) By the legal representative of any deceased person who immediately before his death was entitled to make such an application.
2. An application under sub-section (l) may be made by any of the persons referred

to therein either alone or jointly with any other person.

### **Form of Application<sup>8</sup>**

1. Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.
2. Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, it shall be furnished with the application, within such period as may be prescribed after the filing of the application, proof of the right to make the application.
3. Every application under this section shall state that the applicant is in possession of the invention and shall name the claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.
4. Every such application shall be accompanied by a provisional or a complete specification.

### **Information and Undertaking regarding Foreign Applications<sup>8</sup>**

1. Where applicant for a patent under this Act is prosecuting either alone or jointly with other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application.
2. At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.

### **Provisional Specification<sup>19</sup>**

Application for patent may be accompanied by the provisional specification. It should contain the description of invention with drawing, if required. It is not necessary to include claim. However, the complete specification should be fairly based on the matter disclosed in the provisional specification and should be filed within 6 months (extendable by 3 months) from the date of filing of provisional specification. If the complete specification is not filed

within 12 months or within the extended period, the application will be deemed to be abandoned.

### **Complete Specification<sup>19, 20</sup>**

The complete specification is an essential document in the procedure of patent application with draft required to be attached according to the necessity. Complete specification shall fully describe the invention with drawing, if required, disclosing the best method known to the applicant and end with Claim/Claims defining the scope of protection sought. The protection under the Patents Act depends upon the detailed disclosure invention as the subject of its protection. The specification must be written in such a manner that person of ordinary skill in the relevant field to which the invention pertains, can understand the invention.

### **Contents of Specification**

1. Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.
2. Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any 19 & so supplied shall, unless the Controller otherwise directs be deemed to part of the specification, and references in this Act to a specification shall be construed accordingly.
3. If, in any particular case the controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished, but such model or sample shall not be deemed to form part of the specification.
4. Every complete specification shall-
  - a) Fully and particularly describe the invention and its operation or use and the method by which it is to be performed.
  - b) Disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection.
  - c) End with a claim or claims defining the scope of the invention for which protection is claimed.
  - d) Be accompanied by an abstract to provide technical information on the invention.

e) In case of an international application description, drawings, abstract and claims filed taken as the complete specification for the purpose of this Act.

5. The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.
6. A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.
7. Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect developments of, or additions to, the invention which was described in provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a period.

### **Publication and Examination of Patent Applications<sup>8</sup>**

#### **1. Publication:**

Publication of all the applications for patents except the applications prejudicial to the defense of India abandoned due to non-filing of complete specification with the prescribed time-limit after provisional withdrawal of the application will be published in the official Gazette after 18 months from the date of filing the application or the date of priority whichever is earlier. The publication will include the particulars of the date of application number, name and address of the applicant along with the abstract. No application for patent shall be opened for public inspection before publication. After the date of publication of the application, as stated above, the complete specification along with provisional and drawing, if any, and abstract may be inspected at the appropriate office by making a written request to the controller in the prescribed manner.

#### **2. Request for Examination:**

No application for a patent will be examined if no request is made by the applicant or by any other interested person in Form-19 with prescribed fee of Rs. 1,000/- and Rs. 3,000/- for individual and for legal entity respectively, within a period of 48 months from the date of filing of the

application for patent. However, in case of applications for patents filed before 20<sup>th</sup> May 2003, the request is required to be made by the application of any other interested person within a period of 12 months from 20<sup>th</sup> May 2003, or within 48 months from the date of application whichever is later. Where no request against the application for patent has been filed within the prescribed period, the aforesaid application will be treated as withdrawn and, hereinafter, application can't revive.

### 3. Examination:

Application for patent, where requests have been made by the applicants or by any other interested persons the application will be taken up for examination strictly according to the serial number of the requests received on Form 19. A First Examination Report (FER) stating the objections/requirements is communicated to the applicant or his agent according to the address for service. An applicant shall submit his first reply to the FER within a period of 4 months from the date of FER. Application or complete specification is required to be amended in order to meet the objections/requirements within a period of 12 months from the date of FER. No further extension of time is available in this regard. If all the objections are not complied with within the period of 12 months, the application will be deemed to have been abandoned. When the application is in order for acceptance, it is notified in the Gazette of India.

### Search for Anticipation by Previous Publication and by Prior Claim

1. The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention as far as claimed in any claim of the complete specification.
2. The examiner shall, in addition make such investigation for the 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 sub-section (1) before the date of filing of the applicant's complete specification.
3. Where a complete specification is amended under the provisions of this Act before the amended specification shall be examined and investigated in a similar manner as the original specification.
4. The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent,

and no liability shall be incurred by the Central Government or any officer there of by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

### Opposition Proceedings to Grant of Patents<sup>8</sup>

1. Where an application for a patent has published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on ground.

- a) That the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- b) That the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-
  - (i) in any specification filed in pursuance of an application for a patent made in
  - (ii) India on or after the 1st day of January, 1912; or
  - (iii) in India or elsewhere, in any other document:
- c) Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;
- d) That the invention so far as claimed in any claim of the complete specification published on or after priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;
- e) That the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim;
- f) That the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the

applicant's claim;

- g) That the subject of any claim of the complete specification is not an invention within the meaning of this Act or is not patentable under this Act;
  - h) That the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
  - i) That the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;
  - j) That in the case of a convention application, the application was not made within twelve months from the date of the first application for protection of the invention made in a convention country by the applicant or a person from whom he derives title;
  - k) That the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;
  - l) That the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere, but on no other ground and the Controller shall, if requested by such person for being heard, hear him and dispose of such representation in manner and within such period as may be prescribed.
2. At any time after the grant of patent but before the expiry of a period of one from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any ring grounds, namely:-
- a) That the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
  - b) That the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-
    - (i) In any specification filed in pursuance of an application for

a patent made in India on or after the 1st day of January, 1912; or

(ii) In India or elsewhere, in any other document:

- c) Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;
- d) That the invention so far as claimed in any claim of the complete specification is published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee;
- e) That the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.
- f) That the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim.
- g) That the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act.
- h) That the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed.
- i) That the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge.
- j) That in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title.
- k) That the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention.

- l) That the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere, but on no other grounds.
3. a) Wherever any such notice of opposition is duly given under sub-section, the Controller shall notify the patentee.
  - b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller.
  - c) Every Opposition Board constituted under clause shall conduct the examination in accordance with such procedure as may be prescribed.
4. On receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the controller shall order either to maintain or to amend or to revoke the patent.
  5. While passing an order under sub-section (4) in respect of the ground mentioned in clause (d) or clause (e) of sub-section (2), the Controller shall not take into account any personal document or secret trial or secret use.
  6. In case the Controller issues an order under sub-section (4) that the patent be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly.

### Provisions for secrecy of certain Inventions

Secrecy of certain inventions for defense purposes.

1. Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defense purposes, or where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information.

2. Where the Controller gives any such directions as are referred to in subsection (1) he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defense of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.
3. Without prejudice to the provisions contained in subsection (1), where the Central Government is of opinion that an invention is respect of which the controller has not given any directions under subsection (1), is relevant for defence purposes, it may at any time before notify the controller to that effect, and thereupon the provisions of that subsection shall apply as if the inventions where one of the class notified by the Central Government, and accordingly the controller shall give notice to the Central Government of the directions issued by him.

### Grant of Patents<sup>8</sup>

1. Where an application for a patent has been found to be in order *for grant of the patent and either*
  - a) The application has not been refused by the Controller by virtue of any power vested in him by this Act; or
  - b) The application has not been found to be in contravention of any of the provisions of this Act, the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.
2. On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.

### Grant of patents to be subject to certain conditions<sup>8</sup>

The grant of a patent under this Act shall be subject to the condition that

1. 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.
2. 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.
  3. 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.
  4. 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 other 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.

### Rights of Patentee

1. Where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India.
2. Where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, 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.

### Register of Patents

Register of patents and particulars to be entered therein:

1. There shall be kept at the patent office a register of patents, wherein shall be entered.
  - a) The names and addresses of grantees of patents.
  - b) Notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extension, and revocations of patents.

- c) Particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.
2. No notice of any trust, whether express, implied or constructive, shall be entered in the register, and the controller shall not be affected by any such notice.
3. Subject to the superintendence and direction of the Central Government the register shall be kept under the control and management of the controller.
4. Not with standing any thing contained in sub-section (1), it shall be lawful for the controller to keep the register of patents or any part thereof in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.
5. Not with standing any thing contained in the Indian Evidence Act, 1872 a copy of, or extracts from, the register of patents, certified to be a true copy under the hand of the controller or any officer duly authorized by the controller in this behalf shall, in all legal proceedings, be admissible in evidence.
6. In the event the register is kept wholly or partly in computer floppies diskettes or any other electronic form.
  - a) Reference in this Act to an entry in the register shall be deemed to include reference to a record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register.
  - b) References in this Act to particulars being registered or entered in the register shall be deemed to include reference to the keeping of record of those particulars comprising the register or part of the register in computer floppies, diskettes or any other electronic form.
  - c) Reference in this Act to the rectification of the register are to be read as including references to the rectification of the record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register.

### Renewal Fee

To keep the patent in force, renewal fee is to be paid every year. The first renewal fee is payable for third year of the patent's life and must be paid before the patent's second anniversary. If the patent has not been issued within the period, renewal fees may be accumulated and paid immediately after the patent is sealed or within three months of its record in register of patents or within extended period of six months up to 9

months from the date record. If the renewal is not paid within the prescribed time, the patent will cease to have effect. However, provision to restore the patent is possible to provide application is made within eighteen months of the date of cessation.

Renewal fee is measured from the date of filling of the patent application. Six month's grace time is available with extension fee for payment of renewal fee. No renewal fees is payable on Patents of Addition, unless original patent is revoked and if the Patent of Addition is converted into an independent patent; renewal then, becomes payable for the remainder of the term of the main patent.

### Restoration

Application for restoration of a patent that lapses due to non-payment of renewal fees must be made within 18 months of lapse. The application is to be filed in the appropriate office according to the jurisdiction.

### Documents Required for Filing an Application<sup>3</sup>

1. Application form in duplicate (Form 1 to 1A)
2. Provisional or complete specification in duplicate. If the provisional specification is filed, it must be followed by the complete specification within 12 months/15 months with extension (Form 2)
3. Drawing in duplicate ( if necessary)
4. Abstract of the invention in duplicate.
5. Information and undertaking listing the number, filing date and current status of each foreign patent application in duplicate (Form 3)
6. Priority document (if priority date is claimed) in convention application.
7. Declaration of inventor ship where provisional specification is followed by complete specification or in case of convention application (Form 5)
8. Power of attorney (if filled through Patent Agent)
9. Fee (to be paid in cash /by cheque /by demand draft)

### CONCLUSION

A Patent specification is a unilateral statement by the patentee in words of his own choosing, addressed to those likely to have a practical interest in the subject matter of his inventions by which he informs them, what he claims to be the essential feature of the new product or process for which he/she receives monopoly.

The specification is construed in the light of the previous state of knowledge of the art, at the time of publication. The

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specification must be construed in reference to its subject matter and in reference to the state of knowledge. It must be considered, as a whole, including the drawings and to point out what is old and new.

## REFERENCES

1. www.wipo.int
2. www.iprlawindia.org
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