**PROCESS FOR FILING A PATENT**

In India, the Patents Act is the central legislation dealing with the filling and regulation of existing and new patents in India. The Patent Act suggests that either the inventor, his assignee or his legal representative (in the case where the inventor is deceased) can apply for patents at the head office of the Indian Patent Office. However, the application can also be filed in the branches of the office, depending upon the jurisdiction where the person applying for the patent resides or has a domicile or has the principal office. In case the applicant is not a citizen of India (i.e., a foreign applicant), the applicant should be filing the application for patent in whose jurisdiction the address for service or patent’s attorney is situated.

**What can be Patented?**

In order to file a valid patent application, first, it has to be ascertained whether the product is patentable or not according to section 2(j) of the Patents Act, 1970. The essence of checking patentability is to ascertain whether the said product has the NIU factor. The NIU factor includes the following pointers:

* Novelty: Novelty means that the product which is sought to be registered is novel or new. In the sense that something as such has never been seen or used before.
* Inventiveness: Inventiveness refers to the application of some creativity which has been applied for the first time for solving a purpose.
* Utility: Utility refers to the outcome and the use of the product so sought to be invented. What is the use of bringing this product to the market and what function it aims to simplify?

**Requirements for filing a Patent Application**

* Details of the Applicants including their Name, Address and Nationality
* Details of the Inventors including Name, Address, and Nationality of the inventor(s).
* Complete Specification [or provisional specification if Provisional Application needs to be filled.
* Details relating to the patentable product including Description, Claims, Abstract & Drawings, if any.
* Details pertaining to corresponding foreign applications, including application number, date of filing and current status.

**Required Documents**

* Apart from the patent and specification, the applicant is required to submit the following documents in order to create a proper patent application:
* Declaration of Inventorship Complete Specification including Claims, Abstract & Drawings, if any.
* Undertaking and Statement by the Applicant
* A proof concluding the right to make an applicant.
* In case an agent has been authorized to make the application, the letter of authorization shall also be furnished.

**Step by Step Procedure For Patent registration in India**

1: Patent Searches

Patent searches for registered patents are conducted in India and worldwide to know the novelty of an invention. Generally, it is considered safe to do patent searches before patent application filing. If an invention is found in prior arts or close to prior arts then the novelty of that invention can be challenged by the Indian Patent Office. Therefore, it is important to perform prior art searches in order to save the money and time of an applicant.

2: Patent Drafting

After conducting thorough searches worldwide, the invention is written in a techno-legal language known as the specification which can be with or without claims. Without claims is the provisional specification and with claims is the complete specification. The specification specifies the field of invention, detailed description of the invention with working examples and the best method to perform an invention so that a person skilled in the art can perform the invention. The legal part comes with the claims of the invention which define the legal protection sought by an inventor.

3: Patent Application Filing

A patent application filing is the first step towards obtaining a patent. Procedure Patent Registration in India application filed as a provisional application is generally filed to claim priority date over other applications. A patent application consists of series of forms prepared according to the Indian Patent Act, 1970. The drafted provisional or complete specification is filed in Form-2 of the Indian Patent Act,1970. If a provisional patent application is filed then within 12 months of its filing complete specification has to be filed. There are 6 different kinds of filing filed in the Indian Patent Office. These are:

* Ordinary application
* PCT National phase application
* PCT International application
* Convention application
* Divisional application
* Patent of addition application

4: Publication of Patent Application

Once the Procedure Patent Registration in India has been filed, then after the expiry of 18 months from the date of filing or date of priority whichever is earlier, the application is published in an official journal and is open to the public. This is a chance given to the public to raise an objection if any.

5: Examination of Patent Application/Patent Prosecution

The patent application is examined only when a request for examination has been filed under section 12. The request for examination has to be filed within 48 months of the application filing date or date of the priority. The patent examiner examines a patent application and issues an examination report. The examination report contains a series of objections raised by an examiner. The response to an examination report has to be filed within 12 months of the issuance of the examination report. If needed examiner calls applicant or his agent for hearing. This phase is called as patent prosecution.

In Sphaera Pharma Pte. Ltd and Anr. v. Union Of India[[1]](#footnote-0) , the Delhi High Court emphatically clarified that the Patents Act, 1970 does not offer any scope for considering a request for patent examination filed beyond the prescribed period of 48 months from the date of filing of the application. The time-limit prescribed under the Act for filing a patent examination request is not directory but mandatory and it cannot be relaxed in any event

6: Grant of a Patent

After all objections to the examination report have been compiled and the examiner is satisfied with the reply of an applicant, the application is put in order for grant. On the other hand, if the examiner is not satisfied with the reply and arguments of an applicant, then he/she can reject the application.

1. W.P.(C) 1469/2018, Delhi High Court, Decided on 16.02.2018 [↑](#footnote-ref-0)