



# TEERTHANKER MAHAVEER UNIVERSITY

Moradabad

PATENT DRAFTING AND SPECIFICATION  
WRITING ( LIP 902)  
BY- SOURABH BATAR  
Asst. Professor (CLLS)

# Patent

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- **Patent** is an exclusive monopoly right granted to an applicant/patentee by the Govt., for a limited period to practice the **invention** (manufacture, use and sale), in lieu of the information (best known method) disclosed to the Govt. with regard to an **invention**.
- The Patent confers rights to the patentee to exploit the patent for commercial gains and also to stop others from manufacturing, and selling the patented products/process.

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● An ***invention*** in **general** means a new discovery, relating to a product (machine) or process, even to an existing module or idea.

- An **invention** according to Indian Patent Act [Section 2(1)(j)] means:
  - i- a **new** product or process;
  - ii- involving an **inventive step**; and
  - iii- Capable of **industrial application**.

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**Therefore any:**

- product (e.g. device, machine, composition)
  - process (used for preparing a tangible product),
- is patentable;

**Only if the product or process is:**

- new (novel)
- involving an inventive step (non-obvious) and is
- of industrial use (useful)

## ***Procedure for grant of a patent?***

- Filing a patent application along with the required documents,
- Publication of the patent application (***18 months publication***),
- Filing a request for examination,
- Filing a ***pre-grant opposition*** by an interested person,
- Examination of the patent application based on the turn of the request for examination,
- Filing reply to comply with the requirements of the objections raised by the patent office,
- Attending hearing, if any,
- Acceptance or rejection of the patent application,
- Publication grant of the patent application,
- Filing a ***post-grant opposition*** by an interested person,
- Grant of patent

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- **Documents required to file a patent application**

- Application form (Form 1),
- Specification (Form 2),
- Drawings (if needed to describe the invention clearly and sufficiently),
- Undertaking under section 8 (form 3),
- Declaration of inventorship (Form 5, in case complete specification is filed after provisional),
- Document to claim priority (in case of a conventional application), and
- Power of Authority (if the patent application is filed through a patent attorney)

## **Patent specification; two types**

### **1. Provisional Specification** -comprises mainly little

- description regarding the invention,

### **2. Complete specification** –comprises

i. Description and ii. Claims

#### ● i. **Description**(*technology section*)

- Describes the BEST MODE, in detail, which the inventor considers for practicing the invention

- Enables others skilled in the art to make and use the invention without undue experimentation

## ii. **Claims** (*legal section*)

- KEY to all patents
- Protects legal rights of the patentee
- Defines the legal boundaries of the granted exclusive rights, i.e., determines exactly what the inventor is entitled to exploit commercially and exclude others from practicing (making, using, selling, importing and/or offering for sale) inventor's invention.

## ***Who can apply for a patent?***

- A true and first inventor who holds the rightful ownership in the invention
- A person who is an assignee/legal representative of the first and true inventor
- A legal heir of the first and true inventor in case of demise of the true and first inventor.

## ***Where to file a patent application?***

- **Patent Office Delhi** -The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, National Capital Territory of Delhi and the Union Territory of Chandigarh.
- **Patent Office Mumbai**-The States of Gujarat, Maharashtra, Madhya Pradesh, Goa, Chhattisgarh, the Union Territories of Daman & Diu and Dadra & Nagar Haveli.

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- **Patent Office Chennai** -The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep.
  - **Patent Office Kolkata** -Rest of India (States of Bihar, Orissa, West Bengal, Sikkim, Assam, Meghalaya, Manipur, Tripura, Nagaland, Arunachal Pradesh and Union Territory of Andaman and Nicobar Islands)

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- ***Term (life) of a patent***

The term of the patent according to the amended Patent Act is **20 years** from the date of patent.

- ***Govt. fee for filing a patent application***

- The Government fee in India for filing a patent application is as follows;
- 1. Individual -Rs.1600/-,
- 2. Other than individual, like MSME -Rs. 4000/-, and
- 3. Pvt. and / or Public Ltd. Company -Rs. 8000/-

## **Opposition of a patent - Section 25 of the Patent Act**

- a) Applicant – wrongly obtained the invention ....
- b) Publication before priority date of patent application.
- c) Prior claiming
- d) Invention publicly known
- e) Obvious – no inventive step
- f) No invention as per the Patent Act

## **Opposition of a patent ..**

- a) Invention not described clearly and sufficiently
- b) Undertaking under sec. 8, about foreign filing
- c) Convention application not filed in 12 months
- d) No disclosure about source or geographical origin
- e) Anticipation – traditional knowledge

## ***Revocation of a patent***

- Yes, a patent can be revoked, at any time, on the similar grounds as applicable in case of an opposition. The revocation application is to be filed at the office of the Intellectual Property Appellate Board (IPAB) established by the Govt. of India under the provisions of the amended Patent Act.

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- **PCT APPLICATION-**

- Patent Cooperation Treaty (PCT) is an International treaty which provides facility, to an applicant of the member country, to file a single patent application and designate the countries in which the applicant wants to protect the invention. This is known as international phase of the patent application filed under PCT.

- ***Where can a PCT application be filed?***
- A PCT application can be filed by the applicant either at the national receiving office in his/her own country or at the office of international Bureau (WIPO), Geneva.
- The applicant can claim the date of filing as the priority date in other countries during national phase entry.

## **What is not patentable?**

- An invention contrary to well established natural laws, for example perpetual motion, gravitational force etc..
- An invention contrary to laws of public health and morality, for example, toxic drugs, food items, drinks, etc..
- Mere discovery of scientific principles or formulations of an abstract theories or mere discovery of any living thing or non-living substance occurring in nature.

## **What is not patentable cont. ...?**

- Mere discovery of any new property or new use for known substance unless the efficacy of that substance is increased or mere use of a known process or machine
- Substance obtained by mere ad mixture resulting only in the aggregation of the properties of the components - no new product
- Mere arrangement or rearrangement of the known devices working independently in a known manner

## **What is not patentable cont. ...?**

- A method for agriculture and horticulture
- Any methods of treatment of human beings, or animals
- Plants and animals in whole or any part thereof other than microorganism<sup>0</sup>
- A mathematical or business method or a computer program per se or algorithms
- A literary, dramatic, musical, artistic work, etc.

## **What is not patentable cont. ...?**

- A mere scheme or rule or method of performing mental act or method of playing game
- A presentation of information
- Topography or integrated circuits
- An invention relating to the traditional knowledge
- An invention relating to Atomic Energy (Sect. 4)

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# Thank You