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PATENT & TRADEMARK GUIDE IN INDIA

2025



INDIA JURIS

International Law Firm
Patent & Trademark Attorneys

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PATENTS

INTRODUCTION

In India, the Patent Office under Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade) is responsible for granting and registration of patent. The Patents Act, 1970 which was amended in 2005 and the Patents (Amendment) Rules, 2024 governs patent law in India. India is the member of the following international organization and treaties:

- WIPO Convention, since May 1975.
- Paris Convention (Industrial Property), since December 1998.
- Berne Convention (Literary and Artistic Works), since April 1928.
- PCT (Patents), since December 1998.
- Geneva Convention (Unauthorized Duplication of Phonograms), since February 1975.
- Budapest Treaty (Deposit of Micro-organisms), since December 2001.
- Nairobi Treaty (Olympic Symbol), since October 1983.
- WTO: Member and Signatory to TRIPS Agreement, since January 1995.
- UCC since October 1957.
- SAARC since December 1985.
- Hague Agreement Concerning the International Registration of Industrial Designs, since 2022
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, since April 2014

TYPES OF PATENT APPLICATIONS (1/2)

1. Provisional Application

A provisional application is submitted when the invention is still in the development stage and not yet finalized. It serves as a temporary filing that grants the inventor a "priority right" to the invention. This allows the inventor to label their product as "patent pending."

2. Ordinary Application

An ordinary application is a basic patent application that does not involve any priority claims and is not a convention or national phase application. It must be filed with either a provisional or complete specification.

3. Convention Application

An applicant who submits a ordinary application ("basic application") in a convention country can file a convention application in India within 12 months from the date of the basic application.

4. National Phase Application under PCT

PCT stands for the Patent Cooperation Treaty, which is a sister treaty of the Paris Convention and is administered by the World Intellectual Property Organization (WIPO). The PCT system simplifies the process of filing patent applications by allowing applicants to file under a single system. It also streamlines the search and examination procedures for these applications. This system enables nationals or residents of PCT member states to gain patent protection in any or all of the member countries while deferring the majority of filing costs typically required at the time of application.

TYPES OF PATENT APPLICATIONS CONTD. (2/2)

India became a PCT Contracting State on December 7, 1998, and since that date, it has been possible to designate India in PCT applications and request India for preliminary examination. The Patent Cooperation Treaty (PCT) is an international treaty administered by the World Intellectual Property Organization (WIPO), which simplifies the process of filing patent applications in multiple countries by submitting a single international application. This system enables inventors to seek patent protection in various countries or regions while deferring the associated costs and administrative tasks of filing individual applications in each country. As a member of the PCT, India allows applicants to designate it as a contracting state in their PCT application. India, as a member of the PCT, allows applicants to designate India as a contracting state in their PCT application.

5. Patent of Addition

When an applicant feels that he has made some improvement or changes in his already patented invention, he can apply for patent of addition, without paying any renewal fees. This can only happen when the patent does not have a substantive inventive step.

6. Divisional Application

A Divisional Application is a type of patent application that an applicant can submit when they wish to protect several inventions disclosed in a single parent (or main) application. It enables the applicant to split the content of the original application into one or more separate filings, each covering a specific aspect of the original invention. The primary purpose of a divisional application is to ensure that individual inventions, or those that cannot be included in the parent application, are separately protected.

PATENTABLE INVENTIONS

The basic criteria for an invention to be patentable are the following:



Additionally, Biochemical, Biotechnical or Microbiological Processes are elaborated to include processes such as the use of genetically engineered organisms, biofuels, or novel drug production processes.

- 1. Human Genetic Modifications:** Scientists working on genetic modifications, such as in genetic engineering (e.g., gene editing with CRISPR), cloning, or genetically altered cells are allowed to acquire patents for their inventions. However, human cloning is prohibited in many jurisdictions due to ethical concerns.
- 2. Process Patents:** Processes used in manufacturing, testing, and diagnostic methods for plants or medical treatments are now increasingly patentable, especially if they introduce novel methods or significantly improve efficacy.
- 3. Diagnostic & Therapeutic Methods:** Processes for diagnosis and therapeutic treatments for plants (e.g., agriculture) are patentable if they meet the required criteria.

NON-PATENTABLE INVENTIONS (1/2)

There are some products and processes, which are not patentable in India. They are classified into two categories in the patent act

1. Those, which are **not inventions**
2. Invention **relating to atomic Energy**

Here are several types of inventions that are not eligible for patenting:

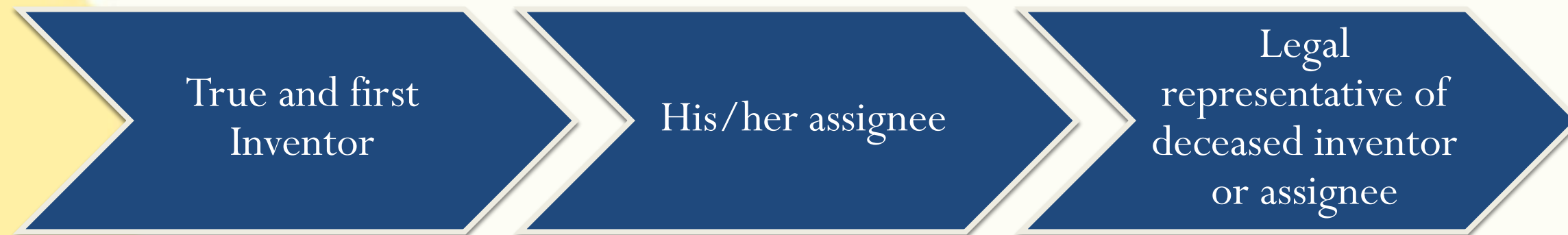
- a) Inventions that are trivial or claim something obvious that contradicts well-established natural laws.
- b) Inventions whose main use or commercial exploitation would violate public order or morality, or cause significant harm to human, animal, or plant life, health, or the environment.
- c) The simple discovery of a scientific principle, formulation of an abstract theory, or the discovery of any living or non-living substances that naturally occur.
- d) The mere discovery of a new form of an existing substance that does not improve its known effectiveness or discovering a new property or use for an existing substance, or the use of a known process, machine, or apparatus unless it results in a new product or involves at least one new reactant.
- e) A substance created through the simple mixing of components, which only combines the properties of the individual components, or a process for making such a substance.

NON-PATENTABLE INVENTIONS CONTD. (2/2)

- f) The basic arrangement, re-arrangement, or duplication of known devices that function independently in a familiar way.
- g) Methods related to agriculture or horticulture.
- h) Any process for the medicinal, surgical, curative, preventive, diagnostic, therapeutic, or other treatments of humans or animals to cure diseases, improve health, or enhance their economic value or that of their products.
- i) Plants and animals, or any part of them, excluding microorganisms, including seeds, varieties, and species, as well as essentially biological processes for their production or propagation.
- j) Literary, dramatic, musical, or artistic works, or any other creative works, including films and television productions.
- k) Simple schemes, rules, or methods for performing mental tasks or playing games.
- l) Presentations of information.
- m) Literary, dramatic, musical, or artistic works, or any other form of aesthetic creation, including cinematographic works and television productions.
- n) A simple plan, rule, or method for performing a mental task or playing a game.
- o) The mere presentation of information.
- p) The layout or design of integrated circuits.
- q) The design of integrated circuit layouts.

PERSONS ENTITLED TO APPLY FOR PATENT IN INDIA

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



CHECK-LIST, FORMS UNDER THE PATENT ACT AND INFORMATION REQUIRED FOR FILING PATENT (1/3)

1. Name, Nationality and Address of the applicant
2. Name, Nationality and Address of the inventor
3. Title, Description, Drawings, Claims & Abstract
4. Priority application number, date and other details
5. PCT application details (in case of national phase)
6. Form 1- Application for Grant of Patent.
7. Form 2- Provisional/Complete Specification of the Invention Including description, drawings, claims & abstracts.
8. Form 3 - Statement and Undertaking Under Section 8 (Information and undertaking regarding foreign applications)
9. Form 4-Request for Extension of Time or delay Condonation
10. Form 5- Declaration as to Inventorship
11. Form 6- Claim or request for any change in Applicant
12. Form 7-Notice of Opposition
13. Form 7A-Representation for Opposition to Grant of Patent.
14. Form 8-Claim or Request for Mention of Inventor.
15. Form 8A-ertificate of Inventorship
16. Form -9 Request for Publication
17. Form 10-Application for Amendment of Patent
18. Form 11 Application for Direction of The Controller
19. Form 12- Request for Grant of Patent u/s 26(1) & 52(2)
20. Form 13- Application for Amendment of Application for Patent/Complete Specification
21. Form 14- Notice of Opposition to Amendment / Restoration / Surrender
22. Form 15- Application for Restoration of Patent
23. Form 16- Application for Restoration of Title/Interest
24. Form 17- Application for Compulsory License

CHECK-LIST, FORMS UNDER THE PATENT ACT AND INFORMATION REQUIRED FOR FILING PATENT (2/3)

25. Form 18A- Request For Expedited Examination of Application for Patent
26. Form 19- Application for Revocation of a Patent for Non-Working
27. Form 20- Application for Revision of Terms and Conditions of License
28. Form 21- Request for Termination of Compulsory License
29. Form 22- Application Registration of Patent Agent
30. Form 23- Application for The Restoration of Name in The Register of Patent Agents
31. Form 24- Application for Review/setting Aside Controller Decision/Order
32. Form 25- Request for Permission for Making Patent Application Outside India
33. Form 26- Authorization of a Patent Agent/ Or any Person in a Matter or Proceeding Under the Act
34. Form 27- Statement Regarding the Working of the Patented Invention on Commercial Scale in India
35. Form 28- To Be Submitted by Small Entity / Startup
36. Form 29- Request For Withdrawal of The Application for Patent
37. Form 30- To Be Used When No Other Form Is Prescribed
38. Form 31- Grace Period
39. Priority document (if applicable)
40. International Search Report

CHECK-LIST, FORMS UNDER THE PATENT ACT AND INFORMATION REQUIRED FOR FILING PATENT (3/3)

When filing a patent application, certain forms and information are mandatory. These can be categorized as follows:

Applicant and Inventor Information

- **Name, Nationality, and Address of the Applicant:** The details of the person or entity applying for the patent.
- **Name, Nationality, and Address of the Inventor:** The details of the individual(s) who have created the invention.

Invention Details

- **Title of the Invention:** A clear and concise title that represents the invention.
- **Description of the Invention:** A detailed explanation of the invention, including how it works and its unique aspects.
- **Drawings (if applicable):** Visual representations of the invention to help explain its components and functions.
- **Claims:** A set of legal statements that define the scope of the invention and what is protected under the patent.
- **Abstract of the Invention:** A brief summary of the invention, typically 150 words or less, that provides an overview of its technical features.

Priority and PCT Information (if applicable)

- **Priority Application Number, Date, and Other Details:** If the patent application claims priority based on an earlier application, these details must be provided.
- **PCT Application Details:** If the application is a part of the Patent Cooperation Treaty (PCT) process, the relevant PCT details must be included, especially if the applicant is entering the national phase.

TERM OF PATENT

The term of patent in India is **20 years** from the date of filing or Date of Priority as the case may be. The **first annuity** (Renewal fees) is 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. The period for payment of renewal fee may be extended **not more than 6 months** if the applicant makes the request for extension in the prescribed form and fee.

A patent shall cease to have effect on the expiration of the period prescribed for the payment of renewal fees. On cessation of the patent right due to non-payment of annuity or on expiry of the term of patent the subject matter covered by the said patent shall not be entitled to any protection.

EXAMINATION PROCEDURE

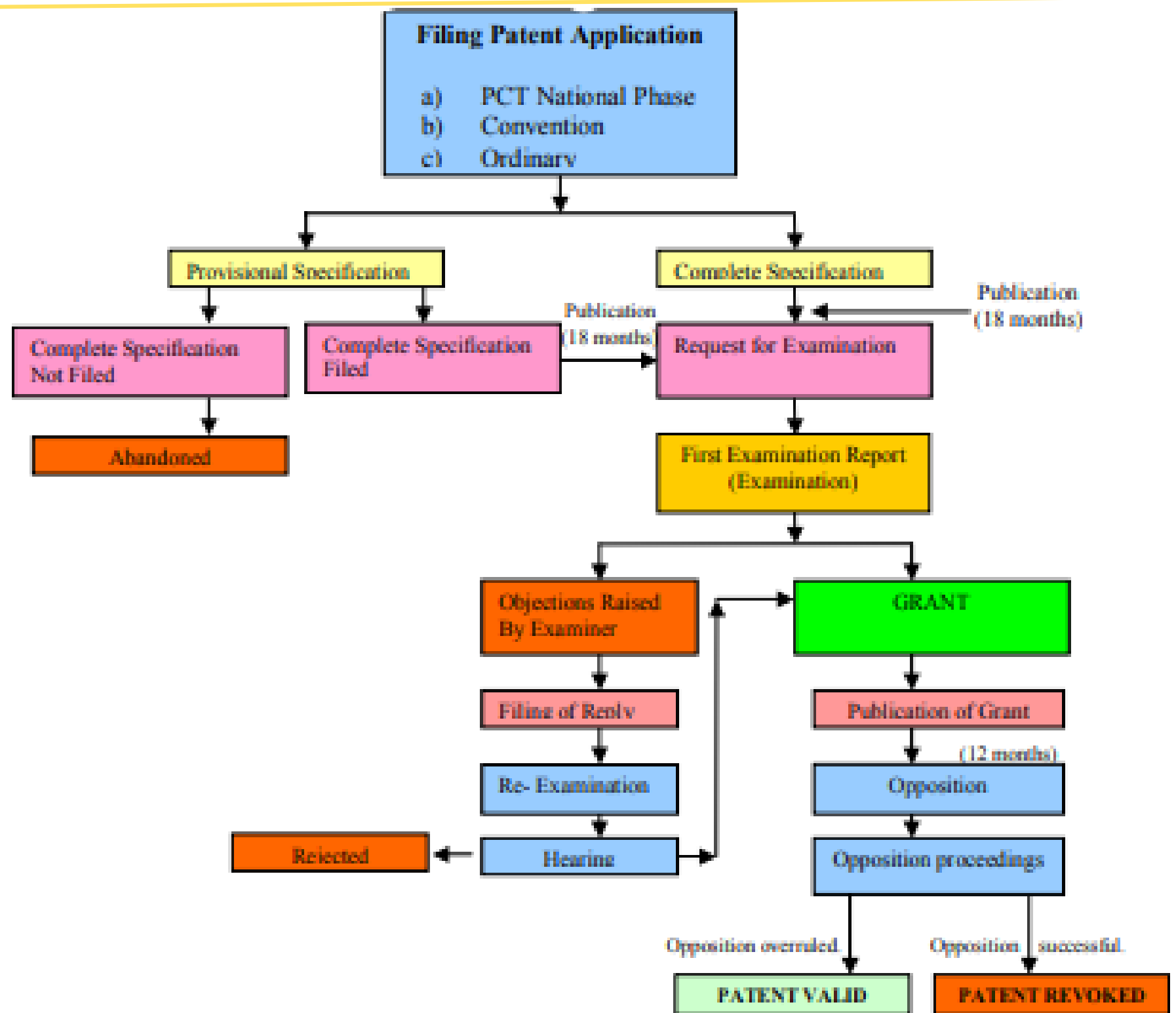
After **18 months** from the filing or priority date (whichever is earlier), a patent application will be published in the official Gazette. The applicant can also request early publication using **Form 9**. Once published, anyone can file an opposition against the patent grant, but the Controller will only consider such opposition if the applicant has submitted a **Request for Examination (RFE)**.

The RFE must be filed **within 48 months** from the priority or filing date, whichever is earlier. If the RFE is not submitted within this period, the application will be deemed abandoned.

Following the examination, the Examiner will issue a First Examination Report (FER). If objections are raised, the applicant is required to address them **within 12 months** from the date the objections are issued.

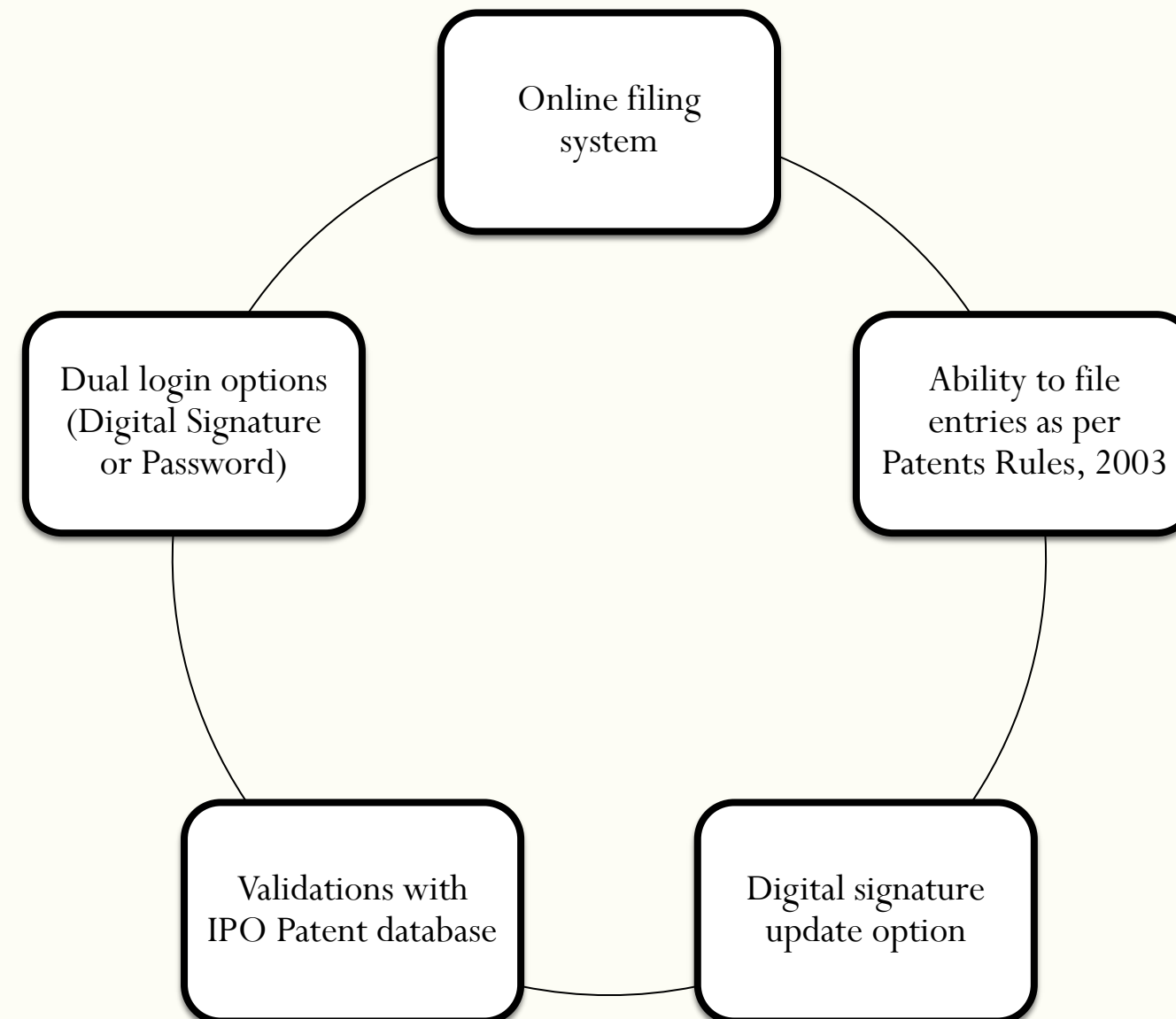
Once all objections are resolved, the patent office will notify the applicant of the patent grant. The granted patent will then be published in the Patent Office Journal, where it will be open for opposition for 12 months from the publication date.

EXAMINATION PROCEDURE



E-FILING OF PATENTS APPLICATIONS IN INDIA

Introduced in 2007, e-filing of patents in India is a convenient and cost-effective method for submitting patent applications. It enables applicants to file applications electronically, making the process more efficient and reducing the dependency on paper submissions. **Some of features of e-filing of patents are as following:**



E-FILING PROCESS

To begin the patent filing process, create an account on the **IP India Portal** by registering with your name, email, and contact information. Once registered, log in using your credentials to access the online patent filing system. Choose the type of application based on your invention's status, such as Provisional, Complete, or PCT National Phase. Then, fill out the necessary forms:

- **Form 1** for basic details like the invention title and applicant information, and
- **Form 2** for a detailed description, including claims, abstract, and drawings.

After completing the forms, upload the required documents, such as the forms themselves, any supporting documents like drawings, power of attorney (if applicable), and priority documents. Pay the appropriate filing fee based on your applicant type (individual, small entity, or large entity). Once everything is in order, review your submission and submit the application. You will receive an acknowledgment receipt with the application number and filing date.

Within **48 months of filing**, submit **Form 18** to request an examination of your application. The Patent Office will examine your application for novelty and inventive steps. If any objections arise, you'll receive a First Examination Report (FER) and will need to respond by amending the application or providing clarifications. If there are no further issues, the patent will be granted, and a certificate will be issued.

TRADEMARKS

INTRODUCTION

Trademark law in India is primarily governed by the **Trademark Act, 1999 (TM Act)**, along with the **Trademark Rules, 2017**, which streamline the registration and procedural aspects of trademark protection. The Act provides for the registration, enforcement, and legal remedies against infringement and passing off, while the Rules simplify procedures, reduce filing fees for startups and individuals, and introduce e-filing mechanisms. TM Act consists of **14 chapters and 159 sections** and **4 Schedules**, covering various aspects of trademark law. **Schedule III** provides **Classification of goods and services** as under the International Classification of Goods and Services (Nice Classification).

The Trademarks Act is in line with the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. India is a member of the **Paris Convention for the Protection of Industrial Property**, which allows trademark owners to claim priority in multiple countries. Additionally, India joined the **Madrid Protocol** in 2013, enabling businesses to file a single international trademark application through the **World Intellectual Property Organization (WIPO)** for protection in multiple member countries. These international agreements ensure that Indian trademark owners can safeguard their brands beyond national borders, promoting global business expansion and fair competition.

A trademark is a distinctive word, symbol, name, logo, or a combination of these elements that is used to identify and differentiate goods or services of one brand from another. Trademark registration is essential for both consumers and business owners. It enables consumers to identify and distinguish between brands, while it also helps businesses protect their brand identity.

ELIGIBILITY AND REGISTRATION OF TRADEMARK

Under **Section 18(1)** of the Trademarks Act, anyone claiming to be the proprietor of a product can apply for trademark registration. This includes individuals, associations, incorporated bodies, Hindu Undivided Families, trusts, partnerships, societies, and companies, among others. The individual or entity listed on the trademark application will be recognized as the trademark owner.

Following are the requirements for filing trademark application:

1. Name & Address of the Applicant Company / Person
2. Trademark / Logo (10 copies)
3. Class(es)
4. Description of goods / services
5. Original priority documents, if priority is claimed. (can be filed within two months from the date of filing in India).
6. Power of Attorney duly notarized (can be submitted later)

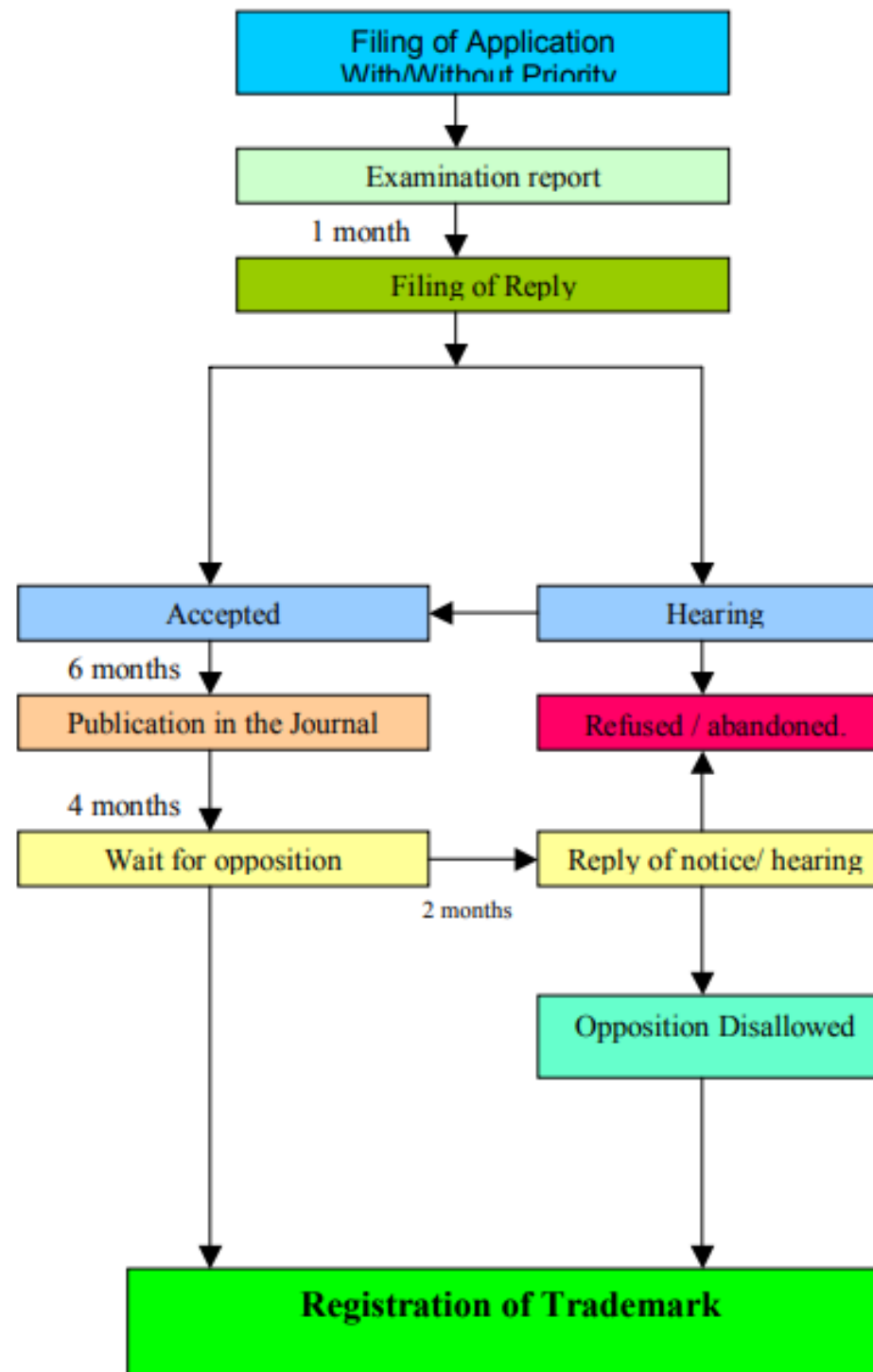
LIST OF KEY TRADEMARK FORMS AS PER TM RULES 2017

FORM	Description
TM-A	Application for the registration of a trademark .
TM-M	Application/Request for misc. functions in respect of a trademark Application/ Opposition/Rectification
TM-C	Request for search and issue of certificate u/r 22(1) and 22(3)
TM-O	Notice of Opposition/Application for Rectification of the Register by cancelling or varying registration of a trade mark/Counter statement/Request to refuse or invalidate a trade mark u/s 25(a) (b) of GI Act, 1999
TM-R	Application for renewal
TM-P	Application to alter or substitute (a) address for service in India; (b) address of prop/user; (c) change name of registered prop/user; (d) Subsequent proprietor in the same name by dissolution for multiple mark; (e) Subsequent proprietor by way of assignment or transfer of a single mark
TM-U	Request for the registration of a registered user of a registered trademark
TM-G	Application for (a) Registration of Trade Mark Agent; (b) Restoration of the name of a person in the Register of trade marks agents; (c) Renewal of the name of a person in the Register of trade marks agents; (d) an alteration in the Register of Trade Marks Agent

STEPS FOR TRADEMARK REGISTRATION

- 1. Trademark Selection:** Sections 9, 11, 13, and 14 of the Trademarks Act outline the grounds for granting or refusing trademarks. Applicants must ensure that the trademark is unique and distinct.
- 2. Trademark Search:** A trademark search is conducted to ensure that the proposed mark is not already registered. This step reduces the risk of objections during the examination process.
- 3. Filing the Trademark Application:** The application for trademark registration (Form TM-A) includes the applicant's details, a representation of the mark, and the class under which the trademark is to be registered.
- 4. Examination of the Trademark Application:** After filing, the application is examined. If an objection is raised, it must be addressed within 3-6 months. Failure to respond within 30 days may lead to the abandonment of the application. The application can be rejected on two grounds: relative grounds mentioned in Section 11 of the Act (similarity to an existing trademark) or absolute grounds mentioned in Section 9 of the Act (lack of distinctiveness).
- 5. Public Opposition:** After examination, the trademark is published in the Trademark Journal, allowing the public a period of 4 months to file an opposition. If no opposition is filed, the trademark is registered. If opposition arises, the applicant has 2 months to respond. After considering the evidence, the registrar decides whether the trademark should be granted.

TRADEMARK REGISTRATION PROCEDURE



TRADEMARK DURATION AND RENEWAL

The registration of a trademark is valid for **10 years** from the date of registration. It can be renewed for ten years, provided that the application for renewal is made **within 6 months** after the expiration date.

LICENSING AND ASSIGNMENT

Trademark can be assigned or licensed in respect of all or portion of the goods or services for which they are registered. Assignment or License Agreements of Trademarks must be made in writing and recorded with the Registrar of Trademarks for its validity and enforcement.

TRADEMARK ENFORCEMENT

The remedies available to the owner of a trademark for unauthorized use of his mark by third party are

- a) an action for infringement in case of a registered trademark, and
- b) an action for passing off in case of an unregistered trademark.

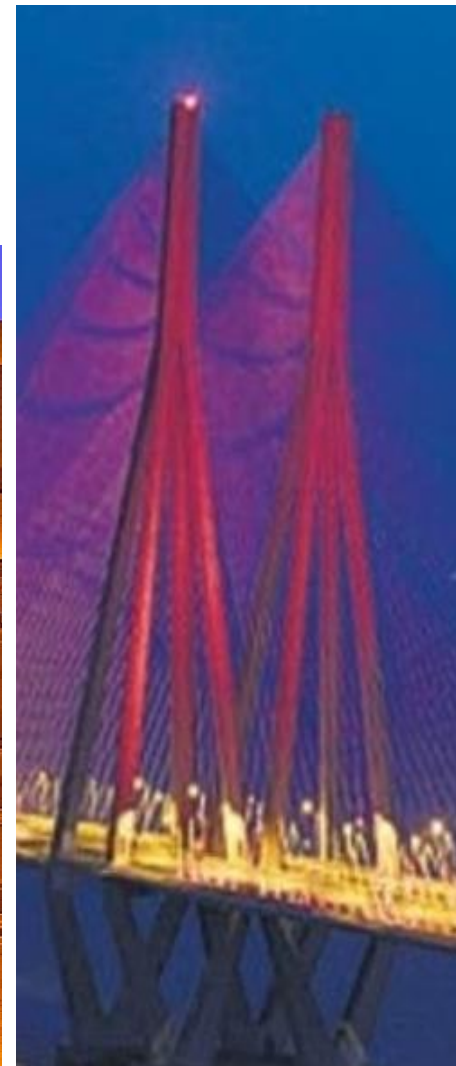
The action for infringement is a statutory remedy and action for passing off is a common law remedy. In a suit for infringement or for passing off, the relief that the court may grant includes injunction, damages, account for profits and/or order for delivery of the infringing labels and marks for destruction

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