

UNDERSTANDING PATENTS & FILING

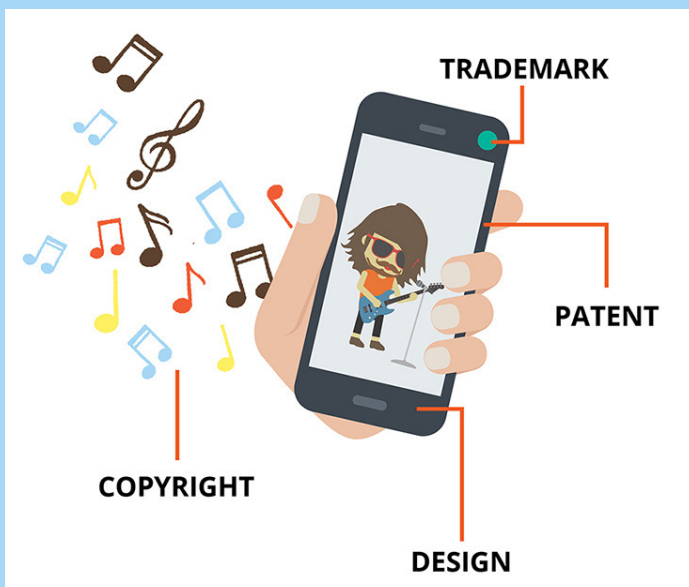
Disclaimer: The information contained in this module is provided for educational and informational purposes only, and should not be construed as legal advice or as an offer to perform legal services on any subject matter.

Protect your ideas

Your intellect has the power to convert your ideas into reality. Ideas are the sparks which have the power to transform you either into a creator and or an innovator. This is referred to as intellectual property (IP) which can be protected as intellectual property rights (IPR), prominent among which are patents, designs, trademarks, copyrights, trade secrets, etc.



IP & IPR



Intellectual property, as the name suggests is a type of property, intangible in nature that exists on paper and has no monetary value till it is converted into a right. IP rights, like any form of property (for example tangible properties such as house, car, pencil etc) can be bought, sold or licensed.

Patent

A 'patent' is an exclusive right granted by the Government to you, which provides a 'right to exclude' and prevents others from making, using, offering for sale, selling or importing your invention.

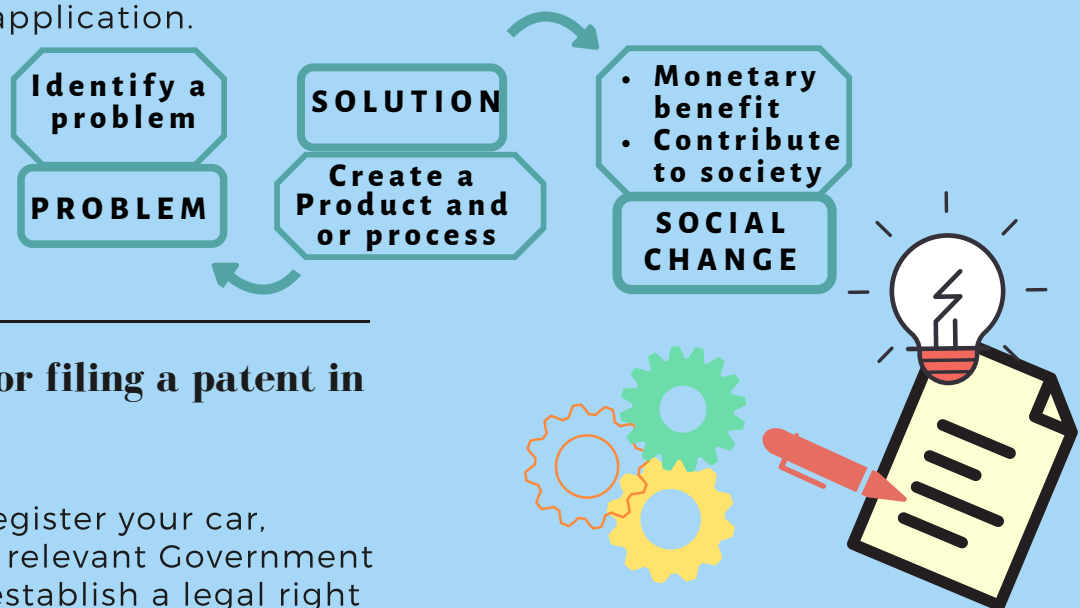
It is a statutory right for an invention, granted for a limited period of time to the patentee.

For an invention to be patentable, it must be new, non-obvious to any person who is skilled in the relevant field of technology and must be capable of industrial application.



Discovery vs. Invention

Patent can only be filed to get rights over an invention and not discovery. Newton saw the apple fall and discovered gravity which is considered to be a discovery. On the other hand, the father of telephone, Alexander Graham Bell, invented the telephone. Thus, when we use our ability to create something novel, or something unique into existence, it is called an 'invention', whereas the process of highlighting the existence of an already existing thing is called 'discovery'.



Procedure for filing a patent in India

Just as you register your car, house etc. in relevant Government agencies to establish a legal right over the property, an invention needs to be filed at the Patent Office under the Controller General of Patents, Designs and Trademarks, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

Remember

Patent is a territorial right and is governed by the laws of the country where it is protected, thus patents granted in India are valid only in India. In India, the rules and regulations of the Patents Act, 1970 prevail. You can protect your invention in other countries as well, provided you apply for a separate application in each country where you need protection.

Filing of Patent Application

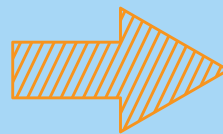
There are various forms which are required to be mandatorily submitted to the Patent Office to establish the legal identity of the invention. Information regarding these forms may be accessed at: <http://www.ipindia.nic.in/faq-patents.htm>



STEPS FOLLOWED

Step 1 Filing of application

The forms and complete specification may be filed online or physically at the appropriate patent offices along with the prescribed fee



Step 2 Publication in patent office journal

The application will be examined by the patent office only if the application is published



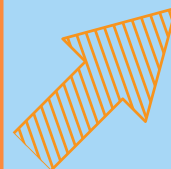
Step 3 Patent Examination

The Patent office examines your patent application by checking the legal aspects. While checking the technical aspects, the office checks whether the invention confirms to the patentability criteria by searching worldwide prior art documents. Checks whether the invention falls within the provisions of section 3 and 4 of the Patents Act 1970.

Novelty - whether the invention is new and not anticipated by any single prior published document

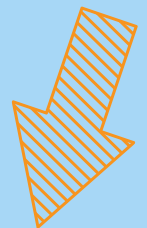
Inventiveness - the invention is non-obvious to a person skilled in the art in view of the disclosures in a mosaic of prior art documents.

Industrial Application - the invention should be capable of use industrially



Step 4 Communication of objections to applicant and Reply to Objections by applicant

The objections w.r.t legal and technical aspects are communicated to the applicant via First examination report (FER) who has to reply complying with the objections



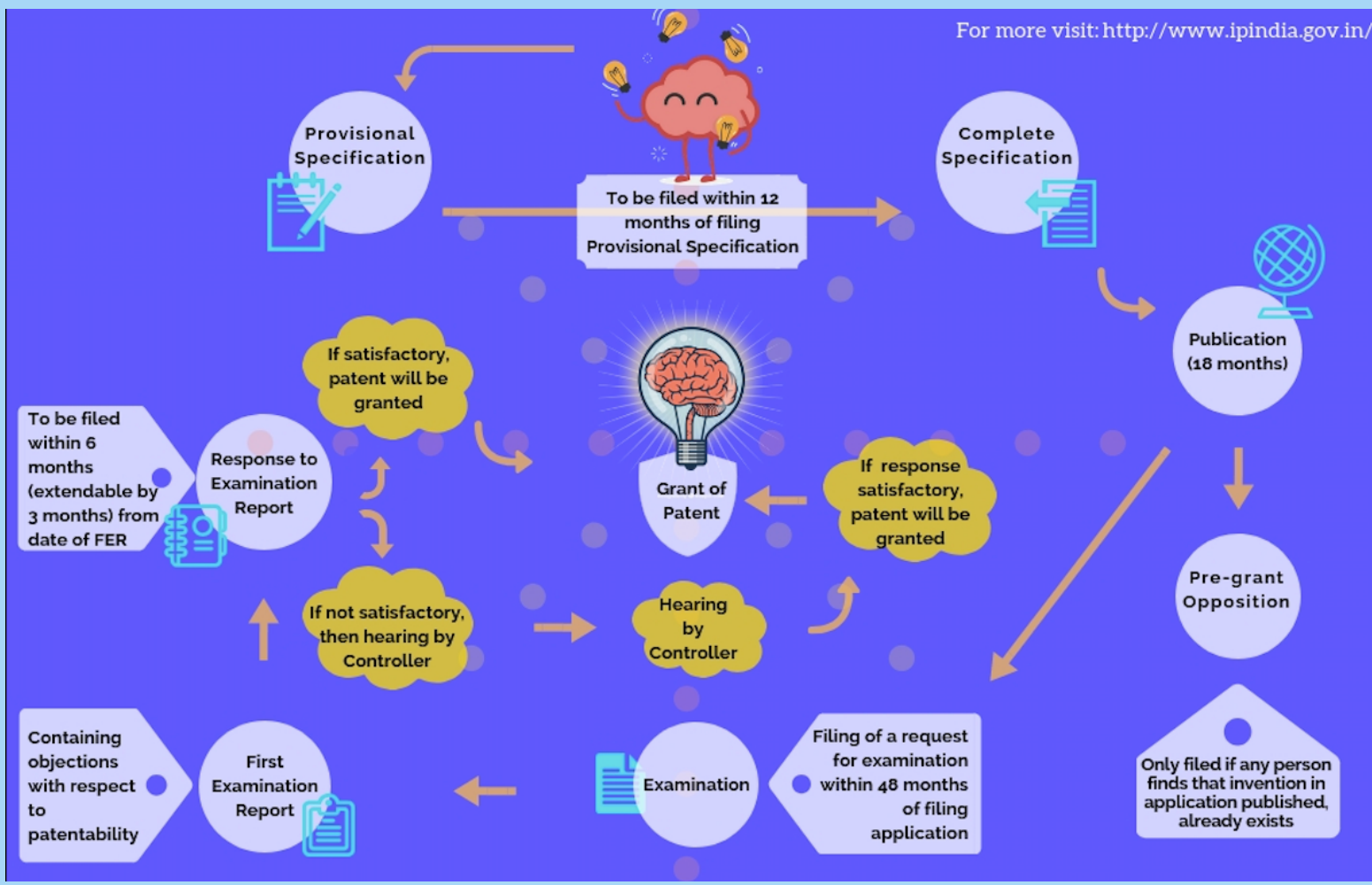
Step 5 Patent Grant

Patent is granted if all the objections raised in the examination report are complied with.

References

<http://www.ipindia.nic.in/ContactPersonDetails.htm>
http://www.ipindia.nic.in/writereaddata/Portal/IPOFormUpload/1_11_1/Fees.pdf
<http://www.ipindia.nic.in/journal-patents.htm>
http://www.ipindia.nic.in/ipr/patent/eVersion_Act Rules/sections/ps3.html

For more visit: <http://www.ipindia.gov.in/>



Fees

The fees to be paid is as prescribed in the fee schedule and is the lowest for individual, startup when compared to company (legal entity).

Priority Date

Priority date of a patent
This is the date on which you first file a patent application in respect of your invention.
You can publish your invention after this date.

Prior art

In legal language, prior art refers to scientific and technical information that exists before the Priority Date and includes any public documents such as - Patents, technical publications conference papers, marketing brochures, products, devices, equipment, processes and materials.

Prior art Search

If possible you can do a prior art search on various free websites such as www.ipindia.nic.in, www.wipo.int

Why examination?

Just like when we buy a house, a systematic check is done to verify the ownership. Similarly, the Government examines whether the invention filed has is patented before or not.

FER

FER is done within prescribed timelines. Presently, it is within 6 months extendable by 3 months



SICLDR# | Delhi

Patent Office | Kolkata (Head Office) | Delhi | Chennai | Mumbai

Designs Wing | Kolkata

Trade Marks Registry | Mumbai (Head Office) | Delhi | Kolkata | Chennai | Ahmedabad

Geographical Indications Registry | Chennai

Copyrights Office | Delhi

Plant Varieties | Delhi

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+ 022-24132735
+ 022-24123322
www.ipindia.nic.in,
cgoffice-mh@nic.in

*Semiconductor
Integrated Circuits
Layout Design Registry

Where to file ?

In India, there are four patent offices located in Delhi, Mumbai, Chennai and Kolkata and filing of the patent application depends upon the state within which the Applicant resides or has office.

