



PATENT BASICS

Siam



ALTACIT GLOBAL

WHAT IS A PATENT ?

- A patent is a limited duration intangible property right that allows one to prevent others from making, using or selling the patented invention in India. A patent is effective for 20 years from its earliest effective filing date (priority date).
- "Patent Pending" and "Patent Applied for" are terms used to inform the public that a patent application has been filed.
- A provisional patent application is a "place holder" and not examined. It allows an inventor the benefit of an earlier filing date (priority date), if a later patent application is filed within one year.
- Generally, each country has its own patent system, although a single "standardized" application can be filed in member countries under the Patent Co-operation Treaty (PCT).

PARTS OF A PATENT :

1. Title
2. Cross reference to related applications
3. Brief summary of the invention
4. Brief description of inventions
5. Detailed description
6. Claims
7. Abstract of the disclosure
8. Drawings
9. Declaration of Inventorship
10. Filing Fee

THE PATENTING PROCESS:

1. Conception of the Invention
2. Reduction to practice
3. Preparation of the patent application
4. Filing the patent application with appropriate filing fees
5. Responding to Indian Patent office
6. Notification, sealing and grant
7. Periodic payment of patent maintenance fees

DISCLOSURE REQUIREMENTS (SEC 10(4) OF PATENT'S ACT)

- **Written Description:** All claims must find adequate "support" in the originally filed application (including a provisional application)
- **Enablement:** The applicant must describe how to make and use the invention so as to permit any person skilled in the art of the invention to do so without undue experimentation
- **Best Mode:** The best way known to the inventor on the application's filing date carrying out the invention.

CLAIM FORMAT EXAMPLE:

1. A [method for/ apparatus for/ means of] something useful, comprising:
A first useful element
A second useful element connected to said first useful element in some way; and
wherein some useful thing is done

UTILITY REQUIREMENT SECTION 2a (ac) OF PATENT'S ACT)

The invention must have utility that is specific, substantial, and credible.

NON-OBVIOUSNESS REQUIREMENT SECTION 2(j) OF PATENT'S ACT)

- There is no teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed invention. However, the cited references or prior art need not specifically suggest making the combination.
- If commercial success (e.g., sales volume, market share, etc) is considered as evidence of non-obviousness, there must exist a sufficient nexus between the success and features recited in the claims (i.e., customers bought the invention because of something in the claims).

NOVELTY REQUIREMENTS

- In general, an invention is novel if it is not anticipated by another reference that teaches every aspect of the claimed either directly or indirectly.
- Circumstances in which a patent cannot be obtained
 - (a) Prior to the date of invention, invention is described in a prior publication/patent or publicly known or used;
 - (b) Prior to the Indian filing date, the invention is described in a prior publication/patent or publicly known or used;
 - (c) Abandonment of the invention;
 - (d) Filing a foreign patent on the same invention greater than 1 year prior to the Indian filing date, and having that foreign patent issue before the Indian filing date;
 - (e) Prior to the date of invention, the invention is described in a Indian patent to another having a Indian filing date before the date of invention;
 - (f) The correct inventor is not named;
 - (g) Prior to the date of invention, the same invention was made in India by another who did not abandon, suppress, or conceal the invention.

PATENT INFRINGEMENT:

Direct Infringement

- The unauthorized making, using, selling, offering to sell, or importing of the entire claimed invention.

Inducing Infringement

- Requires that the alleged inducer actively and knowingly aids and abets another's direct infringement.

Contributory Infringement

- Involves one entity (the contributory infringer) supplying a "non-staple" component of the invention to another entity (the direct infringer), who makes, uses, or sells **the entire invention**
- A non-staple component is a component or part of an invention that is not suitable for any substantial use other than in the patented invention.

CHOOSING AN ATTORNEY /AGENT

Check:

- The attorney/agent's level of technical/engineering expertise
- The attorney/agent's level of patent prosecution expertise
- The attorney's level of legal expertise

Get

- Examples of previously written and issued patents
- References from clients with similar technology

USEFUL WEB LINKS

- Indian Patent Office
www.patentoffice.nic.in
- World Intellectual Property Organization (WIPO)
www.wipo.int
- European Patent Office
www.european-patent-office.org
- United States Patent and Trademark Office
www.uspto.gov

CRITICAL DATES

EVENT	Months from priority date
Filing provisional application	0
Filing complete specification	<12
Filing PCT application	<12
Request for Examination	12-48
Publication	18

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Note: the information contained here is vastly simplified, and is not to be taken as a substitute for sound legal advice.