



## **INDIAN PATENT LAW BASICS**

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What is a patent?

A patent can be defined as a grant of exclusive rights to an inventor over his invention for a limited period of time. The exclusive rights conferred include the right to make, use, exercise, sell or distribute the invention in India. The term of a patent is twenty years, after the expiry of which, the invention would fall into the public domain.

What are the requirements for a patent?

Patents are granted only after the satisfaction of certain requirements, which include the patentable subject-matter, utility, novelty, obviousness and specification.

Patentable subject matter

To be patentable, an invention should fall within the scope of patentable subject matter as defined by the patent statute. The invention must be a product or a process in order to be eligible for patent protection. With regard to medicine or drug and certain classes of chemicals no patent was granted for the product itself even if new, only the process of manufacturing the substance was patentable. After the Patents Amendment Ordinance, 2004, which commenced on January 1st, 2005, the provision relating to food, drugs and other chemicals have been omitted. Both product and process patents are now available for Food and Drugs.

An invention, which is a product or process, is not eligible for a patent grant, if it falls within the scope of non patentable inventions mentioned under section 3 of the Patent Act.

Industrially applicable

A patent can be obtained only if an invention is industrially applicable. An invention is said to be industrially applicable, if it can be made and used in an industry.

## Novelty

The invention claimed must be novel indicating that it should be new at the time of conception. Novelty of invention must be considered in the light of prior art. Prior art means the technology that is relevant to the invention and was publicly available at the time the invention was made. It includes prior specifications, patents, printed and published literature and other materials related to the invention. An invention is not novel if it can be anticipated in the light of prior art.

## Obviousness/Inventive step

An invention should also not be obvious to a person having ordinary skill in the art to which it relates. If the invention is obvious and does not have any inventive step, it is not patentable. Existence of a prior publication of the invention in any Indian specification or in any document in India or elsewhere or public use of the invention would make an invention obvious. In order to be ineligible for a patent, an invention should be obvious at the time of conception of the invention and not at the time of contention of obviousness.

## Specification

Specification is an essential part of a patent. It should consist of the subject-matter, description and at times including the drawing of the invention indicating its scope. The specification has to enable a person with ordinary skill in the art to practice and use the invention. It should also describe the best mode of performing the invention.

A patent will be granted only if it satisfies all the aforementioned requirements.

## What does a patent grant?

A patent grants exclusive rights to the patent owner. It grants the right to make, use, sell, offer for sale, and import the invention into India. Only the patent owner has the right to exercise any or all of the aforementioned rights over the invention.

## What is patent infringement?

Infringement of a patent is the violation of the exclusive rights of the patent holder. If any person exercises the exclusive rights of the patent holder without the patent owner's authorization then that person is liable for patent infringement.

## What are defenses for patent infringement?

Use of a patent for research or experiment, government use, inequitable conduct, patent misuse and laches are some valid defenses for patent infringement.

