



## Intellectual Property Rights and Forms

Dimple D. Marathe\*

Drug regulatory affairs

Shahzeb Shaikh

Drug regulatory affairs

Sanjivani college of pharmaceutical education and research, Kopergaon

### Abstract

Intellectual property rights refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.

These legal rights confer an exclusive right to the inventor/ creator or his assignee to fully utilize his invention/ creation for a given period of time

Patents, trademarks, copyrights, and trade secrets are valuable assets of the company and understanding how they work and how they are created is critical to knowing how to protect them.

Keywords: intellectual property rights, trademark, copyright, patent, designs, geographical indication.

### Introduction

Creative ideas and expression of the human mind (intellect) that have commercial value.

It refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.

- Exclusive Rights
- Territorial Rights
- Assignable/ Licensable Rights

Exclusive license grants the licensee singular permission to exploit the intellectual property in question.

According to the principle of territoriality, intellectual property rights are limited to the territory of the country where they have been granted. The principle of territoriality permits states to tailor their national intellectual property laws to suit their level of technological and economic development.

Assignable rights: Once rights are validly assigned, the assignee can deal with the IP as the exclusive owner thereof, and can therefore reassign the rights, or exploit the assigned rights in any manner. The portion which is assigned cannot be used and exercised by the assignor because the assignee now holds the title to the IP.

## Intellectual Property Rights

- Patents
- Designs
- Trade Marks
- GI of sources
- Copyrights

## Validity

- Patents- 20 years term
- Design- 10 years+ 5 years
- Trade marks- Indefinitely subject to renewal (initially for 10 years)
- GI- indefinitely subject to renewal (initially for 10 years)
- Copyright- (Published literary/ Dramatic, Artistic and Musical work)- lifetime of the author + sixty years

## Who can Apply-

Person (individual not for GI) or legal representative person includes- Firm, partnership, small entity and body corporate.

## All IP rights are territorial in nature

How to indicate your Trade Mark

Registered/ unregistered/ application pending

# TM

Only when registered



### Subject matter of copyright

- Literature works
- Artistic works
- Dramatic works
- Musical works
- Sound recording works
- Cinematographic film

### Term of protection

Published literary/ Dramatic, artistic and musical work	Life of author+ 60 years
Cinematographic film and sound recording	60 years from date of publication
Broadcast reproduction Rights	25 years from the year following the year of broadcast
Performance Rights	50 years from the year following the year in which performance is made

## INDUSTRIAL DESIGNS

The Designs Act 2000

The Designs Rules 2001

The Designs (Amendment) Rules 2021 (latest)

Design means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or in both forms, and are judged solely by the eye.

Term of design 10 years

(Extendable to 15 years)

## GEOGRAPHICAL INDICATIONS

Indication of good that have a specific geographical origin and possess qualities or a reputation that are due to that origin

- Agricultural
- Manufactured
- Handicrafts
- Foodstuff

## INVENTIONS

As per section 2(1) (i) of the patent act 1970

- Invention means a new product or process involving an inventive step and capable of industrial application
- Inventive step means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art
- Capable of industrial application in relation to an invention, means that the invention is capable of being made or used in an industry

## WHO CAN APPLY FOR A PATENT?

- Any person claiming to be the true and first inventor of the invention
- Assignee of the person claiming to be the true and first inventor of the invention e.g., a company
- Legal representative of any deceased person
- Application may be made alone or jointly with any other person

## CATEGORIES OF THE APPLICANTS FOR THE PURPOSE OF FEE PAYMENT

- Natural person
- Startup
- Small entity
- Others

## Fees e-filing in INR

Forms	Natural person or startup or small entity or educational institute	Other than natural (e.g., company)
Form 1	1600/-	8000/-
Form 2	No fees up to 30 pages and 10 claims	No fees up to 30 pages and 10 claims
Form 3	-	-
Form 5	-	-
Form 18	4000	20000
total	5600/-	28000/-

## Territorial jurisdiction of appropriate office for the applicants

Office	Territorial jurisdiction
Patent office Mumbai	The states of Maharashtra, Gujrat, Madhya Pradesh, Chhattisgarh and Goa, Daman and Diu and Dadra and Nagar Haveli
Patent office Chennai	The States of Andhra Pradesh, Kerala, Tamil Nadu, Karnataka and Pondicherry, Laccadive, Minicoy and Aminidivi Islands.
Patent Office New Delhi	States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttarakhand and Uttar Pradesh, Chandigarh and Delhi.
Patent office Kolkata	The rest of India.

## Application Filing- Forms Required

### Mandatory

- form 1- application for patent
- proof of right (if applicant is other than inventor)
- form 2- provisional/ complete specification
- form 3- foreign filing details
- form 18/ 18A request for examination
- fees in case of offline to be paid in cash/ DD in favor of controller of patents
- form 28- if filed as startup/ small entity

### Optional

- form 5- declaration of inventorship
- form 9- request for early publication
- form 26- (PA or GPA)

## Request for withdrawal of patent application (form 29)

### Section 11B (4) and rules 7(4A), 24C (5)

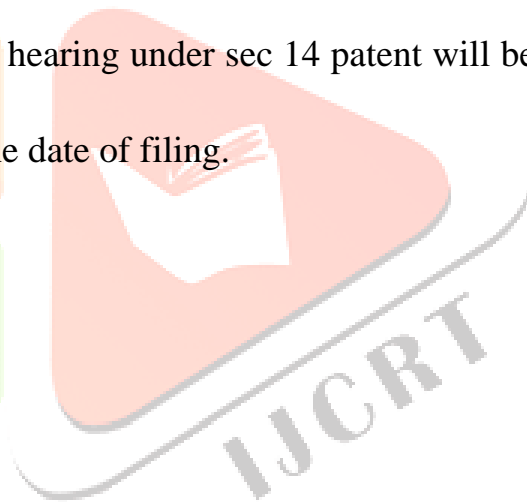
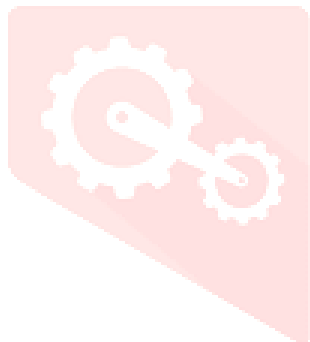
- The applicant may at any time after filing the application but before the grant of a patent, withdraw the application by making a request in form 29
- Upon withdrawal of an application in respect of which a request for examination has been filed but before the issuance of first statement of objection, 90% fee paid for request for examination or expedited examination may be refunded.

## Grant or Refuse or Abandon

(Section 43, 15, 21)

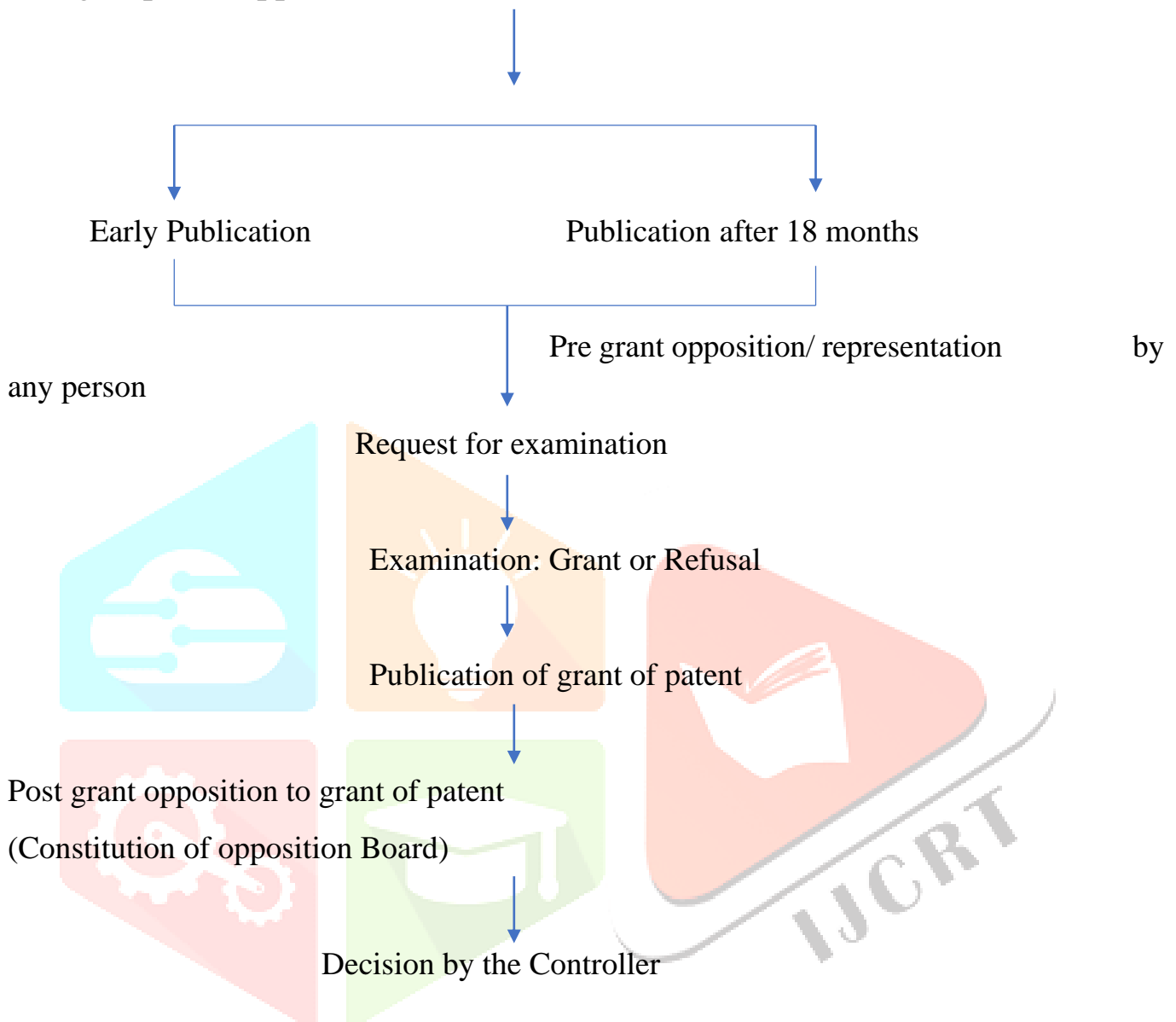
If within 6 months (extendable to 3 months) from the date FER

- All requirements met, patent will be granted immediately with seal of the patent office (letter patent) and post grant publication will be done under sec 43(2)
- Requirements not met- no response from the applicant patent application will be abandoned under sec 21(1)
- Requirements met or not met even after hearing under sec 14 patent will be granted or refused as the case may be
- Terms of patent will be 20 years from the date of filing.



## Patent Grant Procedure

### Filing of patent application



### Foreign filing permission

#### (Sec 39)

- No person resident in India make application for patent outside India without prior permission
- Request for permission under sec 39 shall be made in form 25
- Contravention of section 39 shall be punishable with imprisonment for a term which may be extended to two years, or with fine, or with both

## Filing Procedure

- submission of hard copy in the appropriate patent office (not available for patent agents)
- online filing
  - E- comprehensive file through portal  
<https://ipindiaonline.gov.in/epatentfiling/goforlogin/dologin>  
Require digital signature of class II/III

## References:

1. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/>
2. [https://www.wto.org/english/tratop\\_e/trips\\_e/intell\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intell_e.htm)
3. <https://www.inquartik.com/blog/basic-intellectual-property-rights/>

