

The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010

UNION OF INDIA

India

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Rule

THE-INTELLECTUAL-PROPERTY-APPELLATE-BOARD-PATENTS-PROCEDURE-RULES-2010

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The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010 Published vide Notification New Delhi, the 29th November, 2010 Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) G.S.R. 930(E). - In exercise of the powers conferred by section 117H of the Patents Act, 1970 (39 of 1970), the Appellate Board hereby makes the following rules, namely :-

1. Short title and commencement.

(1) These rules may be called the Intellectual Property Appellate Board (Patents Procedure) Rules, 2010. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

- In these rules, unless the context otherwise requires, -(a) "Act" means the Patents Act, 1970 (39 of 1970); (b) "address for service" means the address furnished by an appellant or applicant or respondent or his authorised agent or his legal practitioner at which service of summons, notices or other processes may be effected; (c) "agent" means a person duly authorised by an appellant or applicant or respondent to present appeal, application, counter-statement, reply, rejoinder, evidence or any other document on his behalf before the Appellate Board and shall include a patent agent referred to in section 125 of the Act; (d) "appeal" means an appeal under section 117A and includes Original Appeal (O.A.) and, Transferred Appeal (T.A.) pursuant to section 117G; (e) "appellant" means a person making an appeal to the Appellate Board under section 117A; (f) "application" means

an application for rectification of register of patents under section 71 or a petition for revocation of patents under section 64;(g)"Deputy Registrar" means the Deputy Registrar of the Appellate Board and includes any officer to whom the powers and functions of the Deputy Registrar may be delegated;(h)"fee" means the fee prescribed under the Second Schedule to these rules;(i)"Form" means a form appended to these rules;(j)"legal practitioner" shall have the same meaning as assigned to it in the Advocates Act, 1961 (25 of 1961);(k)"legal representative" means a person who in law represents the estate of the deceased person;(l)"Miscellaneous Petition" means any petition or request in writing made to the Appellate Board not being an application under section 64 or section 71 or an appeal under section 117A;(m)"pleadings" includes appeals or applications, counter-statements, rejoinders and replies permitted to be filed before the Appellate Board;(n)"Registry" means the Registry of the Appellate Board;(o)"Schedule" means a Schedule to these rules;(p)"section" means a section of the Act;(q)"transferred appeal or application" means an appeal or an application or other proceedings which has been transferred to the Appellate Board under section 117G;(r)words and expressions used and not defined in these rules but defined in the Act or the Trade Marks Act, 1999 (47 of 1999) shall have the meanings respectively assigned to them in the Act or the Trade Marks Act, 1999.

3. Form of procedure of appeal or application.

(1)An appeal against a decision, order or direction of the Controller or Central Government, under section 117A shall be filed in the Form 1 annexed to the First Schedule to the Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2010.(2)An application for rectification or revocation of patents shall be filed in the Form 2 annexed to the First Schedule to the Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2010.(3)An appeal or application sent by post shall be deemed to have been presented before the Registry on the day it was received in the Registry.

4. Appeal or application to be in writing.

(1)Every appeal, application, counter-statement, rejoinder, reply or other document filed before the Appellate Board shall be typed or printed neatly on one side of the full scape sheet only.(2)The appeal or application under sub-rule (1) shall be presented in two sets in a paper-book form along with an empty file size envelope strong enough and sufficiently big to enable covering of the paper book bearing full address of the respondent and, in case the respondents are more than one, then, sufficient number of extra paper-books together with empty file size envelopes as required bearing full addresses of each respondent shall be furnished by the appellant or applicant.

5. Documents to accompany appeal or application.

(1)Every application shall be accompanied by evidence relied upon in support of the application in the form of affidavits with exhibits, if any, annexed thereto in paper-book form.(2)Every appeal filed shall be accompanied by the copies of the order, at least one of which shall be a certified copy, against which the appeal is filed.(3)The documents intended to be attached to an affidavit shall be referred to as Exhibits and shall be marked in the same manner as exhibits admitted by the

Appellate Board.(4)Every appeal or application, if filed by a person other than the appellant or applicant, then an affidavit stating the competency of the person shall be filed along with such appeal or application and the affidavit shall state the name and address and sufficiently describe the identity of the deponent and shall also state in what capacity he is so doing and whether he is authorised and if so by whom and by what instrument and a copy thereof shall be annexed to the affidavit.(5)Where a party is represented by and authorised representative, a copy of the authorisation to act as the authorised representative shall be appended to the appeal or application.

6. Fees.

- The fees for filing counter-statement, petition for intervention by third party, extension of time, adjournment of hearing and review petition before the Appellate Board shall be as provided in the Second Schedule, which shall be paid by way of bank draft drawn in favour of the Deputy Registrar, Intellectual Property Appellate Board, payable at Chennai.

7. Authorisation.

(1)An appeal, application or petition shall be presented by the parties or an advocate having a vakalat duly executed in his/her favour and duly accepted by him/her or by a patent agent having valid authorisation.(2)All communications directed to be made to a person in respect of any proceeding or matter may be addressed to such advocate or agent and service on the advocate or agent shall be deemed to be service upon the person so authorising him and all appearances before the Appellate Board may be made by or through such advocate or agent.

8. Verification of the appeal or application.

- Every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Appellate Board to be authorised to verify the appeal or application and the person verifying shall specify that what he verifies is his own knowledge and what he verifies upon information received and believed to be true by reference to the numbered paragraphs of the pleading and shall be Signed by the person making it and shall state the date on which it was signed and the place where it was signed.

9. Presentation and scrutiny of appeal or application.

(1)The Deputy Registrar shall endorse on every appeal or application the date with his signature on which it is presented.(2)If, on scrutiny, the appeal or application is found to be in order, it shall be duly registered and given a serial number and if any defect is noticed, the appeal or application shall not be registered until such defect is rectified.(3)If an appeal or application is found to be defective and the defect noticed is formal in nature, the Deputy Registrar may allow the appellant or applicant to rectify the same in his presence and if the said defect is not formal in nature, the Deputy Registrar may allow the appellant or applicant fifteen days time to rectify the defect as he may deem fit and if the appeal or application has been sent by post and found to be defective, the Deputy Registrar shall

communicate the defects to the appellant or applicant and allow the appellant or applicant fifteen days time from the date of receipt of the communication from the Deputy Registrar. to rectify the defects.(4)If the appellant or applicant fails to rectify the defects within the time allowed under sub-rule (3), the appeal or application shall be deemed to have been abandoned, unless the time is extended or the delay is condoned in rectifying the defect, in either case not exceeding 30 days as the case may be by the Deputy Registrar.

10. Notices of appeal or application to the respondents.

- A copy of the appeal or application in paper-book form shall be served by the Registry on the respondents as soon as the same is registered in the Registry.

11. Filing of counter-statement to the appeal or application and other documents by the respondent.

- After receipt of the appeal or application filed in the prescribed Form 1 or Form 2, as the case may be given in the First Schedule, the respondent may file two complete sets of counter-statement in the Form 1 of the First Schedule along with fees and documents including evidence in the form of affidavits, if any, in paper-book form before the Registry within two months from the date of service of the notice on him of the filing of the application or appeal and a copy of the counter-statement along with the documents shall be served to the applicant or appellant by the respondent directly under intimation to the Registry and the case shall then proceed for hearing.

12. Affidavit and Exhibits.

(1)The affidavits shall be, headed in the matter or matters to which they relate, drawn up in the first person, divided into paragraphs, consecutively numbered; and each paragraph shall, as far as practicable, be confined to one subject. Every affidavit shall state the description and the true place of abode of the person making the same, shall bear the name and address of the person filing it and shall state on whose behalf it is filed.(2)Where two or more persons join in an affidavit, each of them shall depose separately to such facts which are within his personal knowledge and those facts shall be stated in separate paragraphs.(3)Affidavits shall be taken -(a)in India, before any court or person having by law authority to receive evidence, or before any officer empowered by such court as aforesaid to administer oaths or to take affidavits;(b)in any country or place outside India, before a diplomatic or consular officer, within the meaning of the Diplomatic and Consular Officers (Oaths and Fee) Act, 1948, or such country or place, or before a notary public, or before a Judge or a Magistrate, of the country or place.(4)The person before whom an affidavit is taken shall state the date on which and the place where the same is taken and shall affix his seal, if any, or the seal of the court to which he is attached thereto and sign his name and designation at the end thereof.(5)Any affidavit purporting to have been affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorised by sub-rule (4) to take an affidavit, in testimony of the affidavit having been taken before him, may be admitted by the Deputy Registrar without proof of the genuineness of the seal or signature or of the official character of that person.(6)Alterations and

interlineations shall, before an affidavit is sworn or affirmed, be authenticated by, the initials of the person before whom the affidavit is taken.(7)Where there are exhibits to affidavits, a copy each of such exhibits shall be sent to the other party or parties and the originals shall be produced whenever so required at the Registry for inspection by the other party and shall be produced at the time of hearing unless the Appellate Board otherwise directs.

13. Filing of reply by the appellant or applicant.

- After receipt of counterstatement, the appellant or applicant may file his reply within two months of the service of the counter-statement along with the evidence in the form of affidavits, if any, in duplicate in the Registry and a copy of the reply shall be served on the respondent directly under intimation to the Registry.

14. Filing of Additional documents in appeal.

- No party shall, except with the leave of the Appellate Board had and obtained by request made in writing in the form of a petition, copy whereof, shall serve upon the opposite parties, rely upon any document or file any such document in the appeal paper book which have not been previously filed before the Controller.

15. Translation of documents.

- Where a document in a language other than Hindi or English is referred to in any proceeding, an attested translated copy thereof in Hindi or English duly verified by the person, having the authority to do so, shall be furnished in duplicate to the Appellate Board and a copy thereof shall be served upon the other party or parties directly under intimation to the Registry.

16. Extension of time.

(1)If the Appellate Board is satisfied, on a petition along with the prescribed fee made to it in Form 2 that there is sufficient cause for extending the time for doing any act prescribed under these rules (not being a time expressly provided for in the Act) whether the time so specified has expired or not, it may subject to such conditions as it may deem fit to impose, extend the time and inform the parties accordingly.(2)Nothing in sub-rule (1) shall be deemed to require the Appellate Board to hear the parties before disposing of the petition for extension of time.

17. Intervention by third parties.

- Any person other than the patentee alleging interest in a granted patent in respect of which an appeal has been filed under section 117A against the order or decision of the Controller or in an application for the revocation of the patent or to rectify the Register may apply in the prescribed Form 3 given in the First Schedule along with prescribed fees for leave to implead/intervene, stating the nature of his interest and the Appellate Board may refuse or grant such leave after hearing, if so

required, the parties concerned upon such terms and conditions as it deems fit.

18. Date of hearing to be notified.

- The Registry shall notify the parties the date, time and place of hearing of the appeal or application in such manner as the Chairman may by general or special order direct.

19. Hearing of appeal or application.

(1) On the day fixed or on any other day to which the hearing may be adjourned, the parties shall be heard by a Bench of the Appellate Board. (2) In case where the appellant, applicant or petitioner does not appear at the hearing, the appeal or application or the petition may be treated as abandoned unless he seeks an adjournment under rule 20.

20. Adjournment of hearing.

- A party to the hearing may make a petition in duplicate for adjournment of the hearing in Form 4 with the prescribed fee fifteen days before the date of hearing after serving a copy of the petition for the adjournment upon the other party and the Appellate Board may consider the petition and pass such order as it deems fit.

21. Award of costs by the Appellate Board.

- The Appellate Board may award such costs as it deems fit to the parties having regard to all the circumstances of the case.

22. Language of the Appellate Board.

(1) The proceedings of the Appellate Board shall be conducted in English or Hindi. (2) All decisions or orders of the Appellate Board shall be either in English or Hindi.

23. Order to be signed and dated.

(1) Every order of the Appellate Board shall be signed and dated by the Members of the Bench. (2) The order shall be pronounced in the sitting of the Bench.

24. Communication of orders.

- A certified copy of every order passed by the Bench shall be communicated to the appellant and respondents or their authorised agent or their legal practitioners.

25. Publication of the orders.

- The orders of the Bench as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Chairman may decide.

26. Review Petitions.

(1) A petition in duplicate for review limited to procedural or clerical errors of an order of the Appellate Board may be made to the Registry in the prescribed Form 5 given in the First Schedule along with the prescribed fee within two months from the date on which the order is communicated accompanied by a statement setting forth the grounds on which the review is sought and where the order in question concerns more than one respondent, sufficient extra copies of such petition and statement shall be filed. (2) The Registry shall forward the petition and statement to the respondents to the review petition. (3) The respondents may file counter-statement in the prescribed Form 4 given in the First Schedule within two months from the date of receipt of the review petition and shall forward a copy of the counter-statement to the petitioner directly under intimation to the Registry. (4) The review petition shall be posted for hearing before a Bench by the Registry.

27. Rectification of Orders.

- Notwithstanding anything contained in rule 26, the Appellate Board or the members constituting the Bench that passed any judgment, order or direction may at any time either suo motu or upon request in writing made by any party to the proceedings rectify or correct any clerical error in any such judgment, order or direction.

28. Continuation of proceedings after the death of a party, merger, assignment, acquisition or transmission.

- On the death of a party by devolution on the legal representative of the deceased or by amalgamation, merger, assignment, acquisition, transmission, or by operation of law if a new party becomes entitled for continuation of the proceedings, the proceeding shall be continued subject to filing a request in writing along with evidence in support thereof.

29. Fee for inspection of records and obtaining copies thereof.

(1) A fee for every hour or part thereof shall be charged for inspecting the records of a pending appeal or application or decided case, as given in the Second Schedule. (2) A fee shall be charged for providing xerox copy of each page of the record as prescribed in the Second Schedule.

30. Functions of the Deputy Registrar.

(1) The Deputy Registrar shall discharge the functions under the general superintendence of the Chairman and shall discharge such other functions as are assigned to him under these rules or by

the Chairman by a separate order in writing.(2)The Deputy Registrar shall be the custodian of the records of the Appellate Board.(3)The official seal of the Appellate Board shall be kept in the custody of the Deputy Registrar.(4)Subject to any general or special directions of the Chairman, the official seal of the Appellate Board shall not be affixed to any certified copy issued by the Appellate Board save under the authority in writing of the Deputy Registrar.

31. Additional functions and duties of the Deputy Registrar.

- In addition to the functions and duties assigned under rule 30, the Deputy Registrar shall have the following functions and duties subject to any general or special orders of the Chairman, namely :-
(i)to receive all appeals, applications, counter-statements, replies and other documents;(ii)to decide all questions arising out of the scrutiny of the appeals and applications before they are registered;(iii)to require any appeal, application, counter-statement, replies presented to the Appellate Board to be amended in accordance with the rules;(iv)subject to the directions of the Chairman, to fix date of hearing of the appeals or applications or other proceedings and issue notices therefor;(v)direct any formal amendment of records;(vi)to order supply of copies of documents to parties to the proceedings;(vii)to grant leave to inspect the records of the Appellate Board;(viii)to requisition records from the custody of any court, Controller of Patents or other authority;(ix)to decide questions relating to extension of time in respect of filing of counter-statement, reply, rejoinder, etc.

32. Dress code for the Chairman, Vice-Chairman, Technical Member of the Appellate Board and for the representatives of the parties.

(1)The dress for the Chairman, Vice-Chairman and other Members shall be white or black pant with black coat and black tie or a buttoned-up black coat:Provided that if the officials are formerly from the High Court Bench, then they shall be in their official robes.(2)The professional who appear before the Appellate Board shall be in their professional dress, if any, and in case of other authorised representatives of the parties, it shall be the following :-
(a)in the case of male, a black coat with a black tie or buttoned-up black coat over a white/black pant.
(b)in the case of female, a black coat over white or any other sober coloured saree.
(c)all other persons appearing before the Appellate Board shall be properly dressed.
The First Schedule(See rules 2 & 3)Forms for Making Appeals and Applications

S.No.	Rules of the IPAB	Title	Form Number
1	2	3	4
1.	Rule 11	On filing counter-statement	Form 1
2.	Rule 16	On petition for extension of time	Form 2
3.	Rule 17	On petition for leave to intervene in proceedings	Form 3
4.	Rule 20	On petition for adjournment of hearing	Form 4
5.	Rule 26	On petition to review of the order of Appellate Board	Form 5

Before the Intellectual Property Appellate BoardThe First ScheduleForm 1(See rule 3 and 11)Form of

Counter-Statement (To be filed in duplicate and accompanied by as many copies as there are registered users/authorized users under the registration) In the matter of O.R.A./O.A No. _____ A.B. (add description such as full name, nationality, address, registered office.....) Applicant/Appellant vs. C.D. (add description such as full name, nationality, address, registered office and the residential or official address on which the service of notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order). Respondent I/we [1] the respondent or the patentee of the patent No. hereby give notice that the following are the grounds on which I/we rely for my/our application/patent:- I/we admit the following allegations in the application/ appeal:- All communications relating to these proceedings may be sent to the following address in India:- State the name and address of the registered proprietor or registered user of patent. Verification I (name of the respondent/patentee age of nationality, resident of do hereby verify that the contents of paras to are true to my personal knowledge and paras to are believed to be true on legal advice and that I have not suppressed any material fact. Dated this day of Place: Signature of Advocate/Agent Signature of the Respondent/Patentee (Full Name of the Signatory) To, The Deputy Registrar, Intellectual Property Appellate Board, Note: For fee see second schedule Before the Intellectual Property Appellate Board Form 2 (See rule 16) Application for extension of time (To be filed in duplicate) In the matter of O.R.A./O.A No. _____ A.B. (add description such as full name, nationality, address, registered office.....) Applicant/Appellant vs. C.D. (add description such as full name, nationality, address, registered office and the residential or official address on which the service of notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order). Respondent In the matter of I/we being the in the above matter hereby apply for an extension of time for on the following grounds. All communications relating to these proceedings may be sent to the following address in India:- Date: Place: Signature of Appellant/Applicant/Respondent/Advocate/Agent (Full Name of the Signatory) To The Deputy Registrar, Intellectual Property Appellate Board, Note: For fee see second schedule Before the Intellectual Property Appellate Board Form 3 (See rule 17) Application for leave to intervene in proceedings relating to the rectification of the register or the removal of patent from the register of patents. (To be filed in duplicate together with a statement of case in duplicate) In the matter of O.R.A./O.A No. _____ A.B. (add description such as full name, nationality, address, registered office) Applicant/Appellant vs. C.D. (add description such as full name, nationality, address, registered office and the residential or official address on which the service of notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order). Respondent In the matter of the Patent No granted in the name of on I/we hereby apply for leave to intervene in the proceedings relating to the rectification or removal of the entry in the register in respect of the above mentioned patent. My/our interest in the patent All communications relating to this application may

be sent to the following address in

India:.....VerificationI.....

(name of the respondent/patentee age of nationality, resident of do hereby verify that the contents of paras to are true to my personal knowledge and paras to are believed to be true on legal advice and that I have not suppressed any material fact.Dated this day ofPlace:Signature of Advocate/AgentSignature of the Applicant(Full Name of the Signatory)To,The Deputy Registrar,Intellectual Property Appellate Board,Note: For fee see second scheduleBefore the Intellectual Property Appellate BoardForm 4(See rule 20)Petition for adjournment of hearing(To be filed in duplicate)In the matter of O.R.A./O.A No._____A.B. (add description such as full name, nationality, address, registered office)Applicant/Appellantvs.C.D. (add description such as full name, nationality, address, registered office and the residential or official address on which the service of notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order).RespondentIn the matter of I/We being the in the above matter hereby apply for adjournment of the hearing fixed for for month on the following

grounds:-.....All communication relating to these proceedings may be sent to the following address in

India:.....Dated, this ofPlace:Signature of Appellant/Applicant/Respondent/Advocate/Agent(Full Name of the Signatory)ToThe Deputy Registrar,Intellectual Property Appellate Board,Note: For fee see second scheduleBefore the Intellectual Property Appellate BoardForm 5(See rule 26)Petition for review of the order of the Appellate Board(To be filed in duplicate and accompanied by as many copies as there are registered users/authorized users under the registration)In the matter ofA.B. (add description such as full name, nationality, address, registered office) represented by its Partner/Principal Officer/duly authorized Power of AttorneyPetitionerC.D. (add description such as full name, nationality, address, registered office and the residential or official address on which the service of notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order).RespondentIn the matter of I/we being the in the above matter hereby apply to the Appellate Board for the Review of their order dated the day of 200 in the above matter.The grounds for making this application are set forth in the accompanying statement.VerificationI (name of the respondent/patentee age of nationality, resident of do hereby verify that the contents of paras to are true to my personal knowledge and paras to are believed to be true on legal advice and that I have not suppressed any material fact.Dated this day ofPlace:Signature of Advocate/AgentSignature of the Applicant(Full Name of the Signatory)To,The Deputy Registrar,Intellectual Property Appellate Board,Note: For fee see second scheduleThe Second Schedule(See rules 6)Fee

Entry No.	On what payable	Amount in Rupees	Relevant Form
For Natural Person	for other than natural person either along or jointly withnatural persons		

(1)	(2)	(3)	(4)	(5)
1	On filing Counter-Statement	2000/-	4000/-	1
2	On petition for extension of time	1000/- per month or part thereof	2000/- per month or part thereof	2
3	On petition for leave to intervene	2000/-	4000/-	3
4	On petition for adjournment of Hearing	1000/- per month	2000/- per month	4
5	On petition to review of the order of the IPAB	3000/-	6000/-	5
6	Fee for inspection of records of pending appeal or application of decided case.	150/- per hour or part thereof	300/- per hour or part thereof	-
7	Fee for supplying photocopies of the documents	5/- per page	5/- per page	-
8	Filing of a petition not otherwise provided for	2000/-	4000/-	-