

# IPR [Intellectual Property Rights]

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## Sessional-2 Q/A

Q1. What is the process of publishing an Indian Patent?

Ans:- As an inventor we should be aware with the process of filing patent. If you have created or invented a process, product or service that can be defined as an original invention, it is in your best interest to get it patented. Patenting your invention prevents you from profiting from something created by you. from your competitors

### Steps to follow to file a patent:

Do not disclose your invention in public domain before filing a Patent application failing which the innovation loses its novelty.

Investors can file a patent in two ways :-

- (a) The inventor can file a patent of his/her own.
- (b) " take the help of a patent filing agency

Step ①:- Check if your invention is patentable.

Before you begin for patent registration process, you need to check if patent is patentable. You need to check if another individual has filed a patent on similar technology for which you are filing. Performing in-depth patentability search helps you understand whether or not you have chance of getting a patent. This step is optional, but can save you a lot of time.

Step ② Draft the patent application.

Indian patents need to file a patent application form FORM 1.

For every patent you file, you mandatorily provide a FORM 2 patent specification. You can choose b/w a provisional and complete patent specification application, based on the stage of invention.

Special attention while drafting application, include clauses like usability and outcome, necessary clauses to licence your invention & preventing competition and thereby profiting. Ensure caution, be meticulous and include clauses that prevent the competition from using your technology.

### Step ③ Filing the patent application

• Patent app. needs to be submitted with various other forms as per patent filing procedure of India.

FORM ①:- App for patent grant.

FORM ②:- Patent specification form.

FORM ③:- Undertaking & statement with regards to foreign applications under section 8.

FORM ⑤:- Declaration of invention to be filed with complete application.

FORM ⑥:- Form authorizing patent agent

FORM ⑧:- Mandatory only if applicant is claiming start-up status.

### Step ④ Publishing the patent application :-

Patent app is safely secured by IPO. The patent is then published in official Patent Journal after 18 months approx. Applications who wished to be published before 18 mo. can submit Form 9, in which case will be published within 1 month.

## Step ⑤ :- Examine the patent application

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Before patent is granted, it needs to be examined substantive. As per the rules of patent app. process of India, examined on the basis of merits, demerits. Not an automatic process. We need to make a request to examine a patent app by submitting form 18.

## Step ⑥ Decision to grant patent :-

Once examiner finds out no objection, the patent is granted. The patent is then published in an official patent gazette.

## Step ⑦ Renewing the patent

The patent holder also needs to renew his patent by paying an annual renewal fee. It is possible to renew your patent for a period of 20 years at maximum from the date the patent was first filed.

## Ques ② what are types of patent Explain.

Ans:-

Patent :- A patent is an intellectual property right, which protects inventions, as well as new and non-obvious discoveries. The patent is presented as a legal certificate that ensures that the inventor are the sole benefactor of that invention. Once patented, the investor can use their invention to gain commercial benefits - whether its licensing their idea or leveraging it for their business. The patent also allows the inventor to take legal action against entities reproducing or using their invention without your permission. One needs to file an application to attain a patent. Essentially, there are three types of patent in IPR.

## Types of patents :-

(a) UTILITY PATENT:- The most common type of patent application received by the patent offices across the world. Such a patent covers various processes, machines, compositions of matter, and manufactures which are novel and useful to human-kind in general. These components of the utility patent are defined as under.

While one can obtain a utility patent for new invention, one may also file for this kind of patent if they are making new and useful improvements or enhancements to any existing process, machine, composition of matter.

Eg:- A laptop is essentially a mobile computer, but it is considered as an improvement over computer. India doesn't offer utility patent currently. As an Indian innovator looking to file an utility patent, you can apply for UP in Australia, UAE, China, Germany, France and several other countries.

(b) Design Patent:- Another kind of patent. With reference to patents, design is the "surface" ornamentation of the object. The design patent should include details such as the shape and configuration of the object invented or enhanced. To be eligible to obtain a design patent protection, one must ensure that the product's design is inseparable from the object. And while the object and design should be in sync, the design patent is only granted for, and thus only protects, the appearance of the object. However, if one wishes to protect both the functional and structural features of the object invented, they can also file an Utility Patent.

⑨ Plant Patent :- If one come across new, distinctive plants, that may not have been seen or heard before, they can obtain a third kind of patent. However the discovery must fit the requirements under the plant patent laws before applying. For instance, one cannot apply for this patent if the plant is a tuber propagated plant, or if it appears uncultivated. It should only be reproduced asexually. Asexual rep<sup>⑩</sup> the act in which plant is reproduced through cutting or grafting.

Asexual Rep<sup>⑩</sup> is mandatory for plant patent, which typically do not cover organisms which are genetically modified. The focus of plant patents is primarily on unconventional horticulture.

### Types of patent applications :-

(a) Provisional patents :- An inventor can file for a provisional patent if their invention is still in its development phase and they intend to make improvements to it. They will get 12 months to develop and enhance their invention and convert the provisional patent into a complete patent application.

(b) Complete patent :- If one has their complete invention in place and is ready to get their patent, they can file a complete patent application.

### Q.3 How copyright protect technologies explain.

Ans:- In India the Copyright Act, 1957 grants protection to original expression and computer software is granted protection as a copyright unless it leads to a technical effect and is not a computer program per se. The computer program which has a technical impact is patentable under Indian patent Act, 1970.

Generally computer softwares which does not have a technical effect is protected under copyright law. For a copyright protection, computer software needs to be original and sufficient effort and skill must be put into impart its originality. Apart from original, not copied from elsewhere, the work should be first published in India or if the work is published outside India the author on the date of publication or if the author is dead at the time of his death must be a citizen of India.

Author's Rights:- The copyright act 1957, protects author's economic and moral rights in the copyrighted work as stated in section 14 & 57. In case of softwares, the copyright owner is entitled to reproduce the work, issue copies of the work to the public make cinema film or sound or adaptation of the work, apart from the right to sell or give an commercial rental or offer for sale or for commercial rental any copy of computer software. Such commercial rental doesn't apply in respect of computer software where the software program is not essential object for rental.

Computer program - A literary work.  
Section 2(o) defines 'literary work' and includes comp. program, tables, compilations including databases. Section 13 provides the categories of work in which the copyright subsists which includes original literary work.

The author of a work is the first owner of the copyright in the work.

In case of employer-employee, if a work is made under the course of employment, the employer shall be

first owner of the copyright.

Infringement of copyright & legal remedies for computer software:-

Section 51 defines infringement of copyright and states that a person infringes copyright of another if he unauthorisedly commits any act which only the copyright holder has exclusive rights to do. Civil Remedies are provided in chapter 12, Copyright Act, 1957 granting damages for copyright infringement. Abetment of infringement is unlawful and punishable with imprisonment upto 3 years along with 50k to 2 lac fine not for less than 7 days.

Section 62 of Copyright Act 1957 entitles a plaintiff to file for a suit for injunction against infringements within district court of the jurisdiction where plaintiff resides.

Late Indian Courts have accepted petitions against unknown defendants or person identifiable through IP addresses in internet law related litigation. India has adopted the principle of accepting petitions against unknown persons in defamation cases or IPR infringements, including cases like software piracy. This is a positive legal enforcement strategy to resolve internet related litigation where defendants cannot be identifiable at the stage of filing of petition.

Ques 5. What do you understand by False Advertising.

Ans:- False advertising is a type of advertising that is deceptive in nature because it includes misleading info. or claims to deceive the audiences to make a move in the favor of the advertiser.

False Adv. is the use of false info or claim or similar activities in an ad campaign to deceive the user of buyer and influence purchase decisions.

It is essential to honestly represent their items and prices in front of the target audience, but when they do not do so, it's false adv.

Acc. to the law, misleading adv. occurs when a firm offers false info. in its ads. The adv. may also be a forgery if it omits any vital info. that the customer should be aware of.

Before ruling the adv. to be false, the court requires the consumer to show a few proofs.

1. The buyer viewed the deceptive adv.
2. The client purchased after believing the adv.
3. That the lie was connected to something imp.
4. Adv. was misleading and untrue.

Examples of False Advertising :-

- (a) Deceptive pricing
- (b) Deceptive measurement or quantities
- (c) Deceptive comparisons
- (d) Deceptive Guarantee or warranty
- (e) Bait & switch
- (f) leaving out vital information
- (g) Misleading depictions

Companies found guilty :-

- (1) Hyundai & KIA
- (2) Kashi
- (3) Definity Eye Cream

How can consumers avoid falling prey to false advertising :-

- (1) Check desc. & image reflect the real product
- (2) The company fails to respond to client's concerns
- (3) The firm frequently advertises a product that is better than acknowledged
- (4) The firm provides free stuff with the purchase of another item.