



The Patent Journey in India

A Strategic Guide to The Patents Rules, 2003

The Patents Rules, 2003



A Self-Contained Explainer for Patent Attorneys, In-House Counsel, and Inventors

Your Map to Navigating the Indian Patent System



Securing a patent in India is a strategic journey with distinct stages. This guide transforms the dense procedural text of *The Patents Rules, 2003* into a clear, actionable roadmap.

We will illuminate:

- **The Critical Path:** Following the patent lifecycle from application to post-grant.
- **Key Milestones:** Highlighting mandatory deadlines and procedural gates.
- **Strategic Decisions:** Uncovering opportunities for acceleration and identifying potential obstacles.



Know Your Status: Key Definitions That Drive Strategy

Under *The Patents Rules, 2003*, an applicant's classification is a critical strategic factor, directly influencing fees and timelines.



1. Startup

An entity recognized under the Startup India initiative.

Strategic Impact: Eligible for reduced fees and expedited examination.



2. Small Entity

An enterprise meeting the investment thresholds defined under the MSME Development Act, 2006.

Strategic Impact: Eligible for reduced fees and expedited examination.



3. Educational Institution

A university or other institution recognized by the government.

Strategic Impact: Eligible for reduced fees.

Pro-Tip: The Fee Advantage

Applicants qualifying as a Startup, Small Entity, or Educational Institution must file **Form 28** to avail significant fee concessions. If an application is transferred to a standard entity, the fee difference must be paid (Rule 7(3)).



Start

Part 1: The Starting Line – Filing the Application

A successful journey begins with a complete and compliant application.



Filing Checklist (based on Chapter II):
Application for Grant: Filed using **Form 1**.



Specification (Provisional/Complete): Filed using **Form 2**. Must adhere to strict formatting rules (A4 paper, margins, line numbering) per Rule 9.



Statement on Foreign Applications: Undertaking regarding foreign filings must be submitted in **Form 3** within **6 months** of the Indian filing date (Rule 12).



Proof of Right to Apply: If based on an assignment, proof must be furnished **within 6 months** of filing (Rule 10).



Declaration of Inventorship: Required for non-convention/PCT applications, filed in **Form 5** (Rule 13).



Drawings & Models: Drawings must meet specific standards (Rule 15); Models are only required if requested by the Controller (Rule 16).

6 MONTHS



The International Gateway: PCT National Phase Entry

For international applications filed under the Patent Cooperation Treaty (PCT) designating India, the entry into the national phase is a critical milestone governed by Rule 20.

CRITICAL DEADLINE **31 MONTHS**

from the earliest priority date.

Requirements for National Phase Entry:

- File Application:** The application must be filed in **Form 1**.
- Pay National Fees:** All prescribed national fees must be paid.
- File English Translation:** If the international application was not filed or published in English, a complete and verified English translation is mandatory. This includes the description, claims (as filed and amended), abstract, and any text in drawings.



Consequence of Non-Compliance

Failure to meet the requirements of Rule 20 within the prescribed time limit will result in the application being **deemed withdrawn** (Rule 22).



Filing

Part 2: Publication and the Examination Clock

After filing, the application enters a silent period before becoming public, after which the onus shifts to the applicant to actively pursue examination.



Step 1: Publication (Rule 24)

- Applications are ordinarily published in the official journal **18 months** from the filing or priority date, whichever is earlier.
- Early publication can be requested by filing **Form 9**.



Step 2: Request for Examination (Rule 24B)

- **This is not automatic.** The applicant **MUST** file a request for examination.
- **Key Form: Form 18**
- **CRITICAL DEADLINE:** The request must be filed within **48 months** from the date of priority or filing, whichever is earlier.

48 MONTHS

THIS IS A HARD, UNMISSABLE DEADLINE.

Pro-Tip: The patent office examines applications in the order that requests for examination are filed, not the application filing date. A timely request is a strategic advantage.



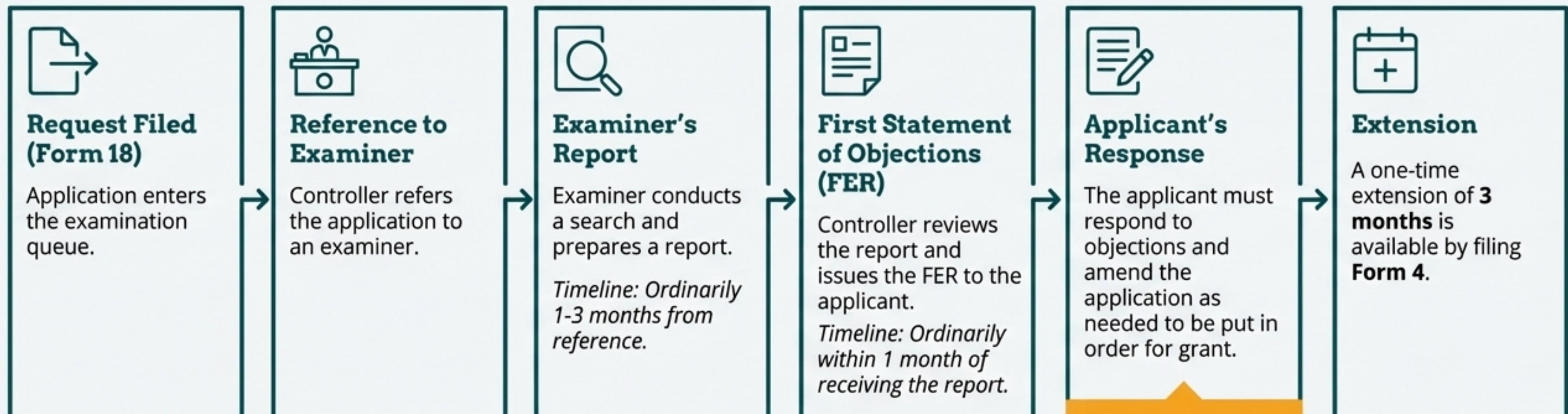
Filing



Examination

Part 3: The Examination Gauntlet – Standard Process

Once the request is filed, the application undergoes a formal examination process as outlined in Rule 24B and Rule 28.



6 months from the date the FER is issued.



Filing



Examination



Examination

The Strategic Choice: Standard vs. Expedited Examination

Rule 24C provides a mechanism for significantly accelerating the examination process for eligible applicants.

Procedure Stage (Rule Ref)	Standard Examination (Rule 24B)	Expedited Examination (Rule 24C)
Request Form	Form 18	Form 18A
Examiner Report Timeline	1-3 Months	1-2 Months
FER Issuance Timeline	~1 Month	~15 Days
Time to Put in Order for Grant	6 months + 3 months extension	6 months + 3 months extension
Application Disposal	No specified timeline	Within 3 months of last reply

Key Takeaway: The expedited path targets a significantly compressed timeline from examination request to final disposal, offering a clear strategic advantage.



Who Qualifies for the Fast Track?

A request for expedited examination (**Form 18A**) can be made if the applicant meets one of the following criteria under Rule 24C:



PCT Application: India was chosen as the International Searching Authority (ISA) or International Preliminary Examining Authority (IPEA).



Small Entity: Meets the MSME criteria.



Government Entity: A department of the government, a government company, or an institution owned, controlled, or substantially financed by the government.



Startup: Recognized by the competent authority.



Female Applicant: Applicant is a natural person and is female (or at least one joint applicant is female).



PPH Agreement: Applicant is eligible under a Patent Prosecution Highway (PPH) agreement between India and a foreign patent office.



Filing



Examination



Grant



Post-Grant

Part 4: The Opposition Challenge - Pre-Grant

Before a patent is granted, any person can challenge the application on specified grounds. This is a pre-grant opposition under Section 25(1) and Rule 55.

Key Features of Pre-Grant Opposition

- **Who can file?**: Any person.
- **When?**: After the application is published but before it is granted.
- **How?**: By filing a representation using **Form 7A**.



Representation Filed (Form 7A)

Opponent files statement and evidence.



Controller Considers

The Controller reviews the representation. If there is merit, a notice is sent to the applicant.



Applicant's Reply

The applicant files a reply statement and evidence within **3 months**



Hearing & Decision

After considering submissions from both parties (and holding a hearing if requested), the Controller issues a final order: reject the opposition, direct amendments, or refuse the patent application.

The Opposition Challenge: Post-Grant Gauntlet

After a patent is granted, its validity can be challenged by any 'person interested' within one year from the date of grant. This is a formal proceeding under Section 25(2) and Rules 55A-62.

Notice of Opposition (Form 7)

Filed by 'person interested' within 12 months of grant.



Opposition Board Constituted (Rule 56)

The Controller forms a 3-member board to examine the case.

Patentee's Reply Statement

The patentee must file a reply within **2 months**, or the patent is deemed revoked (Rule 58).

Opponent's Reply Evidence

The opponent may file reply evidence within **1 month** (Rule 59).

Board Recommendation

The Opposition Board examines all documents and submits a recommendation to the Controller (Rule 56).

Hearing & Final Decision (Rule 62)

The Controller hears both parties and issues a final decision to maintain, amend, or revoke the patent.



Part 5: Reaching the Summit and Maintaining the Patent

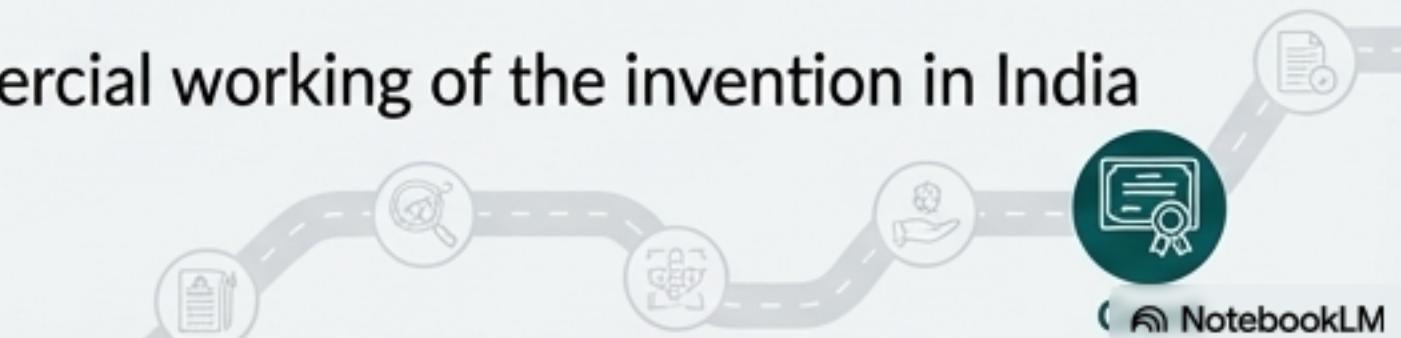
The grant of a patent is a major milestone, but maintaining its validity requires ongoing diligence.

The Grant

Once an application is found in order for grant, the patent is granted and assigned a serial number (Rule 37). The form of the patent is specified in the Third Schedule (Rule 74).

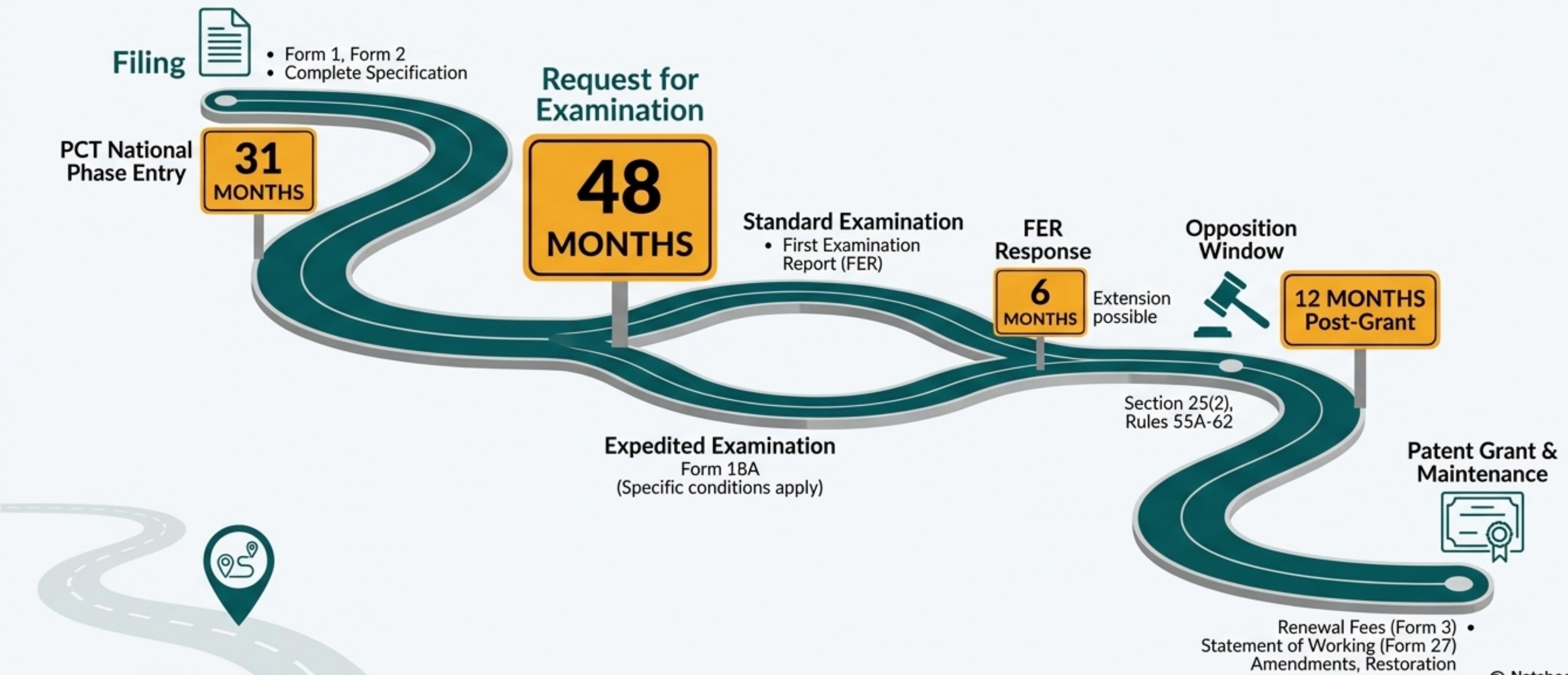
Life After Grant: Key Responsibilities & Procedures

-  **Renewal Fees (Rule 80):** Annuities must be paid to keep the patent in force. This is the most critical post-grant action.
-  **Amendment (Chapter IX):** A patentee can apply to amend the patent specification or claims.
-  **Restoration (Chapter X):** A lapsed patent (due to non-payment of renewal fees) can be restored by applying within 18 months of lapse (**Form 15**, Rule 84).
-  **Surrender (Chapter XI):** A patentee may offer to surrender the patent at any time (**Rule 87**).
-  **Statement of Working (Form 27):** A statement on the commercial working of the invention in India must be furnished periodically (Rule 131).



The Complete Patent Journey in India: A Visual Roadmap

This visual summarizes the entire patent lifecycle, from initial filing to post-grant activities, highlighting key stages and critical deadlines.



The Practitioner's Toolkit: Key Forms at a Glance

Navigating the patent journey requires using the correct forms at each stage. This table summarizes the most critical forms prescribed in the Second Schedule.

Form Number	Purpose	Relevant Stage
Form 1	Application for Grant of Patent	Filing / PCT Entry
Form 2	Provisional / Complete Specification	Filing
Form 3	Statement & Undertaking (Foreign Filings)	Filing
Form 5	Declaration as to Inventorship	Filing
Form 9	Request for Early Publication	Publication
Form 18	Request for Examination	Examination
Form 18A	Request for Expedited Examination	Examination
Form 4	Request for Extension of Time	Examination
Form 7A	Representation for Pre-Grant Opposition	Opposition
Form 7	Notice of Post-Grant Opposition	Opposition
Form 15	Application for Restoration of Patent	Post-Grant
Form 27	Statement of Working	Post-Grant
Form 28	Declaration for Startup / Small Entity Status	Filing



Official Sources & Disclaimer



This guide is intended for informational and strategic purposes only
and does not constitute legal advice.

While every effort has been made to ensure accuracy, any deviations
deviations should be checked against the official Gazette of India,
which shall prevail in all cases.

For the latest rules, forms, and updates, please refer to the official
website of the Intellectual Property Office:

<http://www.ipindia.gov.in>

**(Based on The Patents Rules, 2003, updated as of 21-09-2021)*

