Novelty as a Criterion for Patentability in India

A Comprehensive Analysis under the Patents Act, 1970

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Novelty is the first and most fundamental criterion for patentability under Indian patent law. Before any question of inventive step, industrial applicability or statutory exclusion arises, the threshold question is always the same — is the invention new? If it is not, the inquiry ends there. No amount of technical sophistication, commercial significance or inventive ingenuity can rescue an invention that has already been disclosed to the public.

The requirement of novelty is not a mere formality. It is the juridical foundation upon which the entire patent system rests. A patent is a bargain between the inventor and the public. The inventor receives a limited period of exclusivity. In return, the inventor discloses the invention fully and enriches the public domain. That bargain is only justified if what is being disclosed is genuinely new. Where the invention is already known, no disclosure is being made. The public is receiving nothing in exchange for the monopoly it is granting. The novelty requirement enforces the integrity of this exchange.

Indian patent law imposes one of the strictest novelty standards in the world — a universal absolute novelty standard under which prior disclosure anywhere in the world, in any form, at any time before the priority date, can defeat the novelty of an invention. Understanding how this standard operates — its statutory basis, its scope, the concept of anticipation, its recognised exceptions and its practical implications for prosecution — is essential for every patent practitioner, applicant and researcher engaging with the Indian patent system.

1. The Statutory Framework

The requirement of novelty flows from the definition of invention itself. Section 2(1)(j) of the Patents Act, 1970 defines an invention as a new product or process involving an inventive step and capable of industrial application. The word new is not merely descriptive. It is a statutory precondition. An invention that is not new does not satisfy the definition and therefore cannot be patented regardless of any other consideration.

Section 2(1)(l) of the Act defines new invention as any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of the patent application with complete specification. The definition makes three things

clear. First, novelty is assessed as on the date of filing of the complete specification, or the priority date where applicable. Second, anticipation may arise from either publication or prior use. Third, the geographical scope is unlimited — anticipation anywhere in the world suffices.

The Act does not confine prior art to Indian publications or Indian use. A disclosure in a journal published in the United States, a patent specification filed in Japan, a product sold in Germany, or a process demonstrated at a conference in the United Kingdom — all constitute prior art capable of destroying novelty in India. This absolute novelty standard reflects India's obligations under the TRIPS Agreement and its integration with the global patent system.

Sections 29 to 34 of the Patents Act elaborate the law of anticipation by specifying particular circumstances in which a prior disclosure does and does not defeat novelty. These provisions read together with Section 2(1)(l) constitute the complete statutory framework governing novelty in India.

2. The Concept of Anticipation

Anticipation is the legal mechanism through which prior art destroys novelty. An invention is said to be anticipated when it has been previously disclosed in the prior art in a manner that would enable a person skilled in the relevant art to perform or reproduce the invention. The standard is one of enablement — mere mention or theoretical reference is not enough. The prior disclosure must be sufficiently complete that a skilled person could, on the basis of that disclosure alone, arrive at the claimed invention.

Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries (1978) — Supreme Court of India

> "The fundamental principle of patent law is that a patent is granted only for an invention which must be new and useful. That is to say, it must have novelty and utility. It is essential for the validity of a patent that it must be the inventor's own discovery as opposed to mere verification of what was already known before the date of the patent."

This formulation captures the essence of the novelty requirement. The patent must represent the inventor's own discovery — something that was not previously known. Verification, confirmation or rediscovery of what already exists in the public domain does not qualify.

For anticipation to occur, the prior art document or prior use must disclose all the essential features of the claimed invention. Partial disclosure is not anticipation. If the prior art discloses some but not all features of the claim, the claim may survive a novelty objection — though it may still face an obviousness challenge on inventive step grounds. The all-elements rule governs novelty analysis: every element of the claim must be found, either expressly or inherently, in a single prior art reference.

This single-reference rule is critical. Unlike the analysis for inventive step, where multiple prior art references may be combined to argue obviousness, novelty must be defeated by a single disclosure. A combination of references cannot together destroy novelty unless each individual reference, taken

alone, discloses the complete invention.

3. Sources of Prior Art Under the Patents Act

3.1 Prior Publication

The most common source of anticipation is prior publication. Any document publicly available before the priority date that discloses the claimed invention constitutes anticipating prior art. Qualifying documents include earlier patent specifications filed anywhere in the world, scientific and technical journal articles, conference papers and proceedings, textbooks, product catalogues, manuals, technical datasheets, and online publications and databases. The document must have been publicly accessible before the priority date — a document that existed but was kept confidential does not constitute prior art.

3.2 Prior Use

Prior use of an invention in public, whether in India or elsewhere, before the priority date constitutes anticipating prior art under Section 2(1)(l). Use in a commercial context, a manufacturing process, or a publicly accessible demonstration can all constitute prior art if they disclose the essential features sufficiently for a skilled person to reproduce the invention. Secret use confined to a confidential research environment does not destroy novelty.

3.3 Prior Knowledge and Traditional Knowledge

Inventions that form part of the general knowledge or state of the art in a particular field may be considered prior art. Traditional knowledge is specifically addressed through Section 3(p), which excludes inventions based on traditional knowledge. The Traditional Knowledge Digital Library, established by the Government of India, contains codified records drawn from ancient Indian texts and practices and is made available to patent offices globally as prior art to prevent the grant of patents for inventions that are, in substance, traditional knowledge.

4. Sections 29 to 34: Specific Anticipation Provisions

Section 29 — Anticipation by Prior Publication

Section 29 protects applicants against unauthorised disclosures. If a third party reveals the invention without the applicant's knowledge or consent — whether through breach of confidentiality or inadvertent disclosure — and the applicant files promptly upon learning of this, the disclosure does not defeat novelty. The critical requirements are absence of consent and prompt filing upon discovery.

Section 30 — Anticipation by Communication to Government

Section 30 provides that disclosure to the Central Government or to any person authorised by the Government for the purpose of investigating whether the invention should receive government support shall not constitute anticipating prior art. Communications made in confidence to government authorities for evaluation or security clearance purposes are protected.

Section 31 — Anticipation by Public Display

Section 31 provides a limited grace period for certain public disclosures. Where an invention is displayed at an industrial or other exhibition notified by the Central Government, or communicated to a learned society with the applicant's consent, the disclosure does not defeat novelty provided the application is filed within twelve months. This provision is narrow — it does not create a general grace period. An inventor who discloses the invention in a publication, press release, website or product launch outside Section 31 will find that the disclosure destroys novelty regardless of how promptly the application is filed. This is a critical distinction from the broader one-year grace period available in jurisdictions like the United States.

Section 32 — Use and Publication after Provisional Specification

Section 32 addresses the situation where use or publication occurs after the filing of a provisional specification but before the filing of the complete specification. Such use or publication does not constitute anticipation. The provisional filing establishes a priority date, and disclosures made after that priority date do not affect novelty.

Section 33 — Anticipation by Prior Claiming

Section 33 deals with simultaneous pending applications. The earlier application, once published, constitutes prior art against the later application even if both are pending at the time of examination. This prevents two patents from being granted for the same invention when both applications were filed before either was published.

5. Prior Art and the Priority Date

The priority date is the date against which novelty is assessed. Typically this is the date of filing the complete specification in India. However, where an applicant has first filed in a Paris Convention country, the Indian application may claim that earlier priority date, provided the Indian application is filed within twelve months of the foreign filing date.

This Convention priority mechanism is of considerable practical importance. An applicant who files first in the United States, Japan, Europe or any other Paris Convention country and then files in India within twelve months effectively backdates the novelty assessment to the date of the first foreign filing. Disclosures made between the foreign filing date and the Indian filing date do not constitute prior art against the Indian application.

Under the PCT route, an international application designating India enjoys a priority date from the date of the international filing. National phase entry in India must generally be completed within thirty-one months from the priority date.

6. Absolute Novelty vs Local Novelty

India follows an absolute novelty standard — the relevant prior art universe is global. There is no safe harbour for an invention disclosed abroad but not yet in India. An Indian applicant seeking to patent a product already commercially available in another country will find that the foreign availability defeats novelty under Indian law, even if no Indian consumer has encountered the product. This standard prevents the Indian patent system from being used to grant monopolies on inventions already part of the global state of the art.

7. Novelty in Examination Practice

7.1 The First Examination Report

The examination of novelty is central to the First Examination Report issued by the Patent Office. The examiner searches prior art databases — including published patent specifications from multiple patent offices and scientific literature — and identifies documents that disclose the claimed invention. Where the examiner identifies an anticipating prior art document, a novelty objection is raised. The applicant must respond by either amending the claims to distinguish the invention from the prior art, or by arguing that the cited prior art does not anticipate the claims.

7.2 Responding to Novelty Objections

A well-structured response to a novelty objection requires precise claim-by-claim analysis. The applicant must demonstrate that the cited prior art reference does not disclose each and every element of the claimed invention. Even if nine out of ten features are found in the prior art, the absence of the tenth feature is sufficient to overcome the novelty objection. Claim amendments under Sections 57 and 59 are frequently necessary. The amendments must narrow the claim to distinguish it from the prior art without broadening the scope beyond the original disclosure.

Cipla Ltd. v. F. Hoffmann-La Roche Ltd. (2009) — Delhi High Court

> The Delhi High Court examined whether the prior art disclosed not merely related compounds but the specific compound that was the subject of the patent claim. The case illustrated the significance of specificity — prior art that discloses a genus does not necessarily anticipate a species within that genus. The court's analysis of the anticipation question required careful examination of what was actually disclosed in the prior art.

8. Novelty of Selection Inventions

A selection invention arises where an inventor selects a specific member or subgroup from a broader class already disclosed in the prior art, and demonstrates that the selected member has a surprising or unexpected property that was not previously known. Indian patent law permits selection inventions where the specific selection was not individually disclosed in the prior art and where unexpected properties are demonstrated by appropriate evidence.

Novartis AG v. Union of India (2013) — Supreme Court of India

> Novartis sought a patent for the beta crystalline form of imatinib mesylate, the active compound in Gleevec. The Supreme Court held that the beta crystalline form was a new form of a known substance and that under Section 3(d) it was required to demonstrate enhanced therapeutic efficacy over the known substance. The Court found that improved bioavailability, without evidence of enhanced therapeutic efficacy, was insufficient. The case directly impacts how novelty and selection are assessed in pharmaceutical patent prosecution.

9. Novelty Distinguished from Inventive Step

Novelty and inventive step are distinct requirements. Novelty asks whether the invention has been previously disclosed — it is a binary question answered by reference to a single prior art reference. Inventive step asks whether the invention, even if not previously disclosed in its entirety, would have been obvious to a person skilled in the art having regard to the prior art. Inventive step allows the combination of multiple references and the application of common general knowledge.

Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries (1978)

> "To be patentable an improvement must not be obvious to a skilled worker in the relevant art at the relevant date. The improvement must involve a technical advance as compared to what was known before."

An invention may be novel — because no single reference discloses all its features — yet still lack inventive step because the combination of features was obvious. A patentability analysis that establishes novelty without addressing inventive step is always incomplete.

10. Novelty in Opposition and Revocation Proceedings

Lack of novelty is one of the most frequently invoked grounds in pre-grant and post-grant opposition proceedings under Section 25. Any person may file a pre-grant opposition after publication but before grant, relying on prior art that the examiner may not have considered. Post-grant oppositions may similarly raise anticipation based on prior art not before the examiner during prosecution.

Merck Sharp & Dohme Corporation v. Glenmark Pharmaceuticals Ltd. (2015) — Delhi High Court

The Delhi High Court engaged in detailed analysis of prior art cited in revocation proceedings under Section 64, examining the scope of each prior art disclosure and whether it individually anticipated the claims in suit. The case reinforced that anticipation requires complete disclosure of all claim elements in a single reference and that courts must carefully compare claim language against the prior art disclosure.

11. Practical Implications for Patent Prosecution

Prior art searching before filing is not optional — it is essential. A thorough prior art search conducted before filing the complete specification allows the applicant to draft claims clearly distinguished from the prior art, to anticipate objections likely to arise during examination, and to make an informed decision about whether the invention has a realistic prospect of surviving examination.

Claim drafting strategy must be informed by the prior art landscape. Independent claims should cover the broadest scope the prior art permits. Dependent claims should capture narrower preferred embodiments. If broad claims are rejected on novelty grounds, narrower dependent claims may survive and still provide meaningful protection.

The priority date must be secured and maintained. Convention priority from an earlier foreign filing should be claimed wherever available. The twelve-month window under the Paris Convention for filing in India must be managed carefully. Provisional applications serve a valuable role in securing an early priority date — filing a provisional specification as soon as the invention is sufficiently developed secures the priority date even before the complete specification is ready.

Conclusion

Novelty is not merely the first criterion for patentability. It is the conceptual bedrock on which the entire patent system is built. The Indian Patents Act, 1970 adopts an absolute novelty standard that is among the most rigorous in the world. Prior disclosure anywhere in the world, in any form, before the priority date constitutes anticipating prior art. The concept of anticipation requires that a single prior art reference disclose all the essential features of the claimed invention in a manner that enables a person skilled in the art to perform it.

Sections 29 to 34 of the Act provide a carefully structured framework governing specific anticipation scenarios, recognising limited exceptions while leaving no general grace period for an inventor's own prior publications. Case law from the Supreme Court and High Courts has consistently reinforced that novelty must be assessed rigorously and that the single-reference rule governs anticipation analysis.

For practitioners, applicants, researchers and students engaged with Indian patent law, novelty demands careful prior art searching, disciplined claim drafting, strategic priority management and a thorough understanding of how the Indian Patent Office and courts interpret and apply the anticipation

doctrine. An invention that cannot establish novelty cannot enter the Indian patent system at all — making novelty not merely the first question but, in many cases, the only question that matters.

References and Further Reading

- The Patents Act, 1970 (as amended up to 2024) — https://ipindia.gov.in
- The Patents Rules, 2003 — https://ipindia.gov.in/patents.htm
- Manual of Patent Office Practice and Procedure — https://ipindia.gov.in
- TRIPS Agreement (WTO Official) — https://www.wto.org/english/docs_e/legal_e/27-trips.pdf
- Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries (1978) — https://indiankanoon.org/doc/371631/
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- Cipla Ltd. v. F. Hoffmann-La Roche Ltd. (2009) — https://indiankanoon.org/doc/1368968/
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