Patent Protection in India: Between Innovation and Regulation

A Comprehensive Analysis under the Patents Act, 1970

Published by **Patenevo** | Indian Intellectual Property Knowledge Platform | www.patenevo.in

Patent protection in India is commonly described as a mechanism to reward innovation, although that description is incomplete. The Indian patent system is not designed merely to reward inventors. It is structured to regulate innovation. It grants exclusivity only after subjecting an invention to statutory scrutiny, technical examination and public-interest safeguards.

The framework governing patent protection in India is contained in the Patents Act, 1970, read with the Patents Rules, 2003, as amended from time to time. The statute establishes not only what qualifies as an invention but also what does not. It prescribes procedures for filing, examination, opposition, grant, enforcement and revocation. The system is layered and conditional. Understanding patent protection in India therefore requires moving beyond definitions and examining how the law actually operates.

The Statutory Foundation of an Invention

Section 2(1)(j) of the Patents Act defines an invention as a new product or process involving an inventive step and capable of industrial application. Three cumulative requirements must be satisfied: novelty, inventive step, and industrial applicability. Failure in any one element leads to rejection. Even if these elements are satisfied, the invention must not fall within the exclusions listed under Section 3 or the prohibition under Section 4. Patent protection in India is not a matter of registration — it is a matter of qualification.

Novelty

The patent law follows a strict absolute novelty standard. Under Sections 29 to 34, an invention is anticipated if it has been publicly disclosed anywhere in the world before the priority date. There is no concept of local novelty. Prior art is global. A single prior disclosure — whether in a patent document, journal article, conference paper or publicly accessible database — can defeat novelty. Examiners frequently rely on prior art references that applicants may not have initially considered.

Inventive Step

Section 2(1)(ja) defines inventive step as a feature involving technical advance as compared to existing knowledge or having economic significance and making the invention not obvious to a person skilled in the art. The main question is whether the invention would have been obvious to a skilled person based on existing knowledge. Small improvements, optimizations or combinations of known things often receive objections. Objections related to inventive step are usually the biggest challenge during patent prosecution.

Industrial Applicability

Industrial applicability requires that the invention be capable of being made or used in an industry. This requirement eliminates purely speculative or theoretical disclosures. The invention must have demonstrable utility. While objections on this ground are less frequent than novelty or inventive step, insufficient demonstration of practical application may raise concerns.

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. 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."

Section 3 — Non-Patentable Subject Matter

Section 3 lists subject matter that is not considered an invention for purposes of the Act. Significant exclusions include mere discovery of scientific principles, mathematical methods, business methods, computer programs per se, mere arrangement or duplication of known devices, new forms of known substances without enhanced efficacy, and traditional knowledge. Section 3 operates as a filter — it narrows the scope of what may enter the patent system.

Section 3(d) and Pharmaceutical Patents

Section 3(d) excludes new forms of known substances unless they result in enhancement of known efficacy. The emphasis on enhanced therapeutic efficacy reflects a policy decision to prevent evergreening. Minor modifications or derivatives must demonstrate substantive improvement. Data becomes central. Claims unsupported by empirical evidence often fail.

Section 3(k) and Software

Computer programs per se are excluded. However, inventions demonstrating technical effect or technical contribution beyond the software itself may be considered. Drafting strategy plays a decisive role. Claims framed as pure algorithms are unlikely to succeed. Claims integrated with hardware and

technical implementation stand a better chance.

Filing and Prosecution

Patent protection begins with filing under Section 6. Under Section 11A, applications are published after eighteen months. Section 11B requires filing a request for examination within the prescribed time. The Controller examines whether the invention satisfies statutory requirements. Objections are communicated through a First Examination Report. Amendments are permitted under Section 59, provided they do not broaden the scope beyond original disclosure.

Opposition Mechanisms

Indian patent law provides both pre-grant and post-grant opposition under Section 25. Pre-grant opposition may be filed by any person after publication but before grant. Post-grant opposition may be filed within one year of publication of grant. Grounds include lack of novelty, obviousness, non-patentable subject matter, insufficient disclosure and wrongful obtaining.

Rights Conferred upon Grant

Section 48 confers exclusive rights on the patentee. In case of product patents, the patentee has the exclusive right to prevent others from making, using, selling, offering for sale or importing the product. In case of process patents, the patentee has the right to prevent use of the process and sale or import of products directly obtained by that process. These rights are territorial and limited to India.

Compulsory Licensing

Section 84 permits compulsory licensing after three years from grant if reasonable requirements of the public are not satisfied, the patented invention is not available at reasonably affordable price, or the invention is not worked in India. Compulsory licensing underscores the balance between private rights and public interest.

Enforcement and Infringement

Patent infringement arises when exclusive rights under Section 48 are exercised without authorization. Section 108 provides civil remedies, including injunction and damages. In process patents, Section 104A shifts burden of proof to the defendant under specified circumstances. Patent enforcement proceedings often fall under Commercial Courts, which apply expedited procedures.

Conclusion

Patent protection in India operates within a structured statutory framework that emphasises technical contribution, disciplined disclosure and public interest safeguards. From filing to enforcement, every stage demands precision. The Patents Act, 1970 does not merely register inventions. It tests them. Those seeking patent protection must approach the system strategically — with careful drafting, robust prior art analysis and awareness of statutory exclusions. In India, a strong patent is one that survives examination, opposition and scrutiny — and remains defensible.

References

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