



# Pre-Grant and Post-Grant Opposition in India

---

## A Comprehensive Analysis under the Patents Act, 1970

Published by Patenevo | Indian Intellectual Property Knowledge Platform | [www.patenevo.in](http://www.patenevo.in)

Pre-grant and post-grant opposition proceedings under the Patents Act, 1970 constitute one of the most distinctive features of the Indian patent system. Unlike several jurisdictions that rely predominantly on post-grant administrative review or judicial revocation, India has preserved a dual opposition framework that enables scrutiny both before and after grant. This structure reflects a deliberate legislative choice to balance procedural fairness to applicants with public interest oversight.

## Statutory Framework

---

Sections 25(1) and 25(2) of the Patents Act, read with Rules 55 and 55A to 63 of the Patents Rules, 2003, provide the statutory and procedural backbone of the opposition mechanism. The opposition system functions not merely as an adversarial tool but as a quality-control instrument embedded within the patent grant process.

## Pre-Grant Opposition — Section 25(1)

---

Section 25(1) permits 'any person' to file a pre-grant opposition after publication of the application under Section 11A and before grant of the patent. The breadth of locus standi at this stage is striking. The statute does not require the opponent to demonstrate commercial interest or legal injury. The legislative rationale is that prior to grant, patent examination is a matter of public concern — any person may bring relevant information to the Controller's attention to prevent an erroneous grant.

## Grounds of Pre-Grant Opposition

---

The grounds of opposition under Section 25(1) include wrongful obtaining, anticipation by prior publication or prior claiming, prior public knowledge or use in India, obviousness and lack of inventive step, non-patentable subject matter under Section 3 or Section 4, insufficiency of description, non-disclosure of information under Section 8, and traditional knowledge.

## Pre-Grant Procedure — Rule 55

---

The opponent must file a representation by way of opposition in Form 7A along with a statement and evidence. The Controller considers the representation and, if satisfied that a prima facie case exists, issues notice to the applicant. The applicant may then file a reply statement and evidence. The



Controller has discretion to grant a hearing before deciding. There is no Opposition Board at the pre-grant stage — the decision rests with the Controller.

## Post-Grant Opposition — Section 25(2)

---

Section 25(2) provides for post-grant opposition by 'any person interested' within one year from the date of publication of grant. The phrase 'person interested' has been judicially interpreted to mean a person engaged in or promoting research in the same field as the invention, or having a direct, present and tangible commercial interest. This narrower locus standi reflects the higher threshold appropriate once exclusive rights have vested.

## Post-Grant Procedure — Rules 55A to 63

---

Upon receipt of a notice of opposition in Form 7, the Controller constitutes an Opposition Board under Section 25(3A). The Board examines the notice, statement and evidence and submits a reasoned recommendation to the Controller. The parties are given opportunity to file reply evidence and to be heard. The Controller, after considering the Board's recommendation, issues a reasoned order maintaining, amending or revoking the patent.

## Burden of Proof

---

The burden of proof in opposition proceedings rests on the opponent, though the standard is civil in nature — preponderance of probabilities. In pre-grant opposition, doubts may weigh more readily against the applicant since the patent has not yet been granted. In post-grant opposition, where a patent enjoys a presumption of validity, the evidentiary threshold may be practically more demanding.

### UCB Farchim SA v. Cipla Ltd. — Delhi High Court

The Delhi High Court examined the scope of post-grant opposition proceedings and emphasised adherence to procedural fairness and statutory timelines. The Court underscored that opposition proceedings are not mere formalities but substantive adjudications requiring careful evaluation of evidence and reasoned decision-making. The Controller must independently apply his or her mind, even when relying on the Opposition Board's recommendations.

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

Although primarily concerning Section 3(d), the litigation history of the Novartis patent application demonstrates the layered scrutiny available within the Indian system, including pre-grant opposition. The Supreme Court's judgment affirmed that rigorous examination and opposition serve the public interest by preventing evergreening and ensuring adherence to statutory standards.



## Opposition Distinguished from Revocation — Section 64

---

Opposition proceedings must be distinguished from revocation under Section 64. Section 64 permits revocation of a patent by the High Court on similar substantive grounds, either through a standalone petition or as a counterclaim in an infringement suit. However, the forums and procedural posture differ significantly. Opposition is an administrative proceeding before the Controller within defined timelines. Revocation under Section 64 is judicial and may be invoked at any time after grant. Opposition therefore provides an early, cost-effective mechanism to challenge questionable patents.

## Strategic Use of Opposition

---

Pre-grant opposition has often been used in the pharmaceutical sector to delay or prevent grant of patents perceived as weak or as attempts at evergreening. Because 'any person' may file a pre-grant opposition, civil society organisations and patient advocacy groups have participated in such proceedings. Post-grant opposition, given its narrower locus standi and structured timeline, tends to be employed by commercial competitors as an alternative to immediate revocation litigation.

## Appellate Jurisdiction

---

The Controller's orders are appealable to the High Court following the abolition of the Intellectual Property Appellate Board and the transfer of jurisdiction to High Courts under the Tribunals Reforms Act, 2021. This shift has reinforced judicial oversight while integrating patent appeals into mainstream commercial litigation structures.

## Conclusion

---

Pre-grant and post-grant opposition in India represent a carefully structured mechanism of administrative oversight. Sections 25(1) and 25(2), supported by Rules 55 and 55A–63, create a layered system that encourages transparency, deters weak patents and balances private rights with public interest. The Indian model demonstrates that robust opposition mechanisms, when properly administered, enhance rather than undermine the legitimacy of patent protection.

## References

---

- The Patents Act, 1970 — <https://ipindia.gov.in>
- The Patents Rules, 2003 — <https://ipindia.gov.in/patents.htm>
- UCB Farchim SA v. Cipla Ltd. — <https://indiankanoon.org/doc/28519340/>
- Novartis AG v. Union of India (2013) — <https://indiankanoon.org/doc/165776436/>
- Tribunals Reforms Act, 2021 — <https://www.indiacode.nic.in/handle/123456789/16901>
- Commercial Courts Act, 2015



---

This article is published by **Patenevo** — India's Intellectual Property Knowledge Platform. Visit [www.patenevo.in](http://www.patenevo.in) for more articles, case laws and resources.

