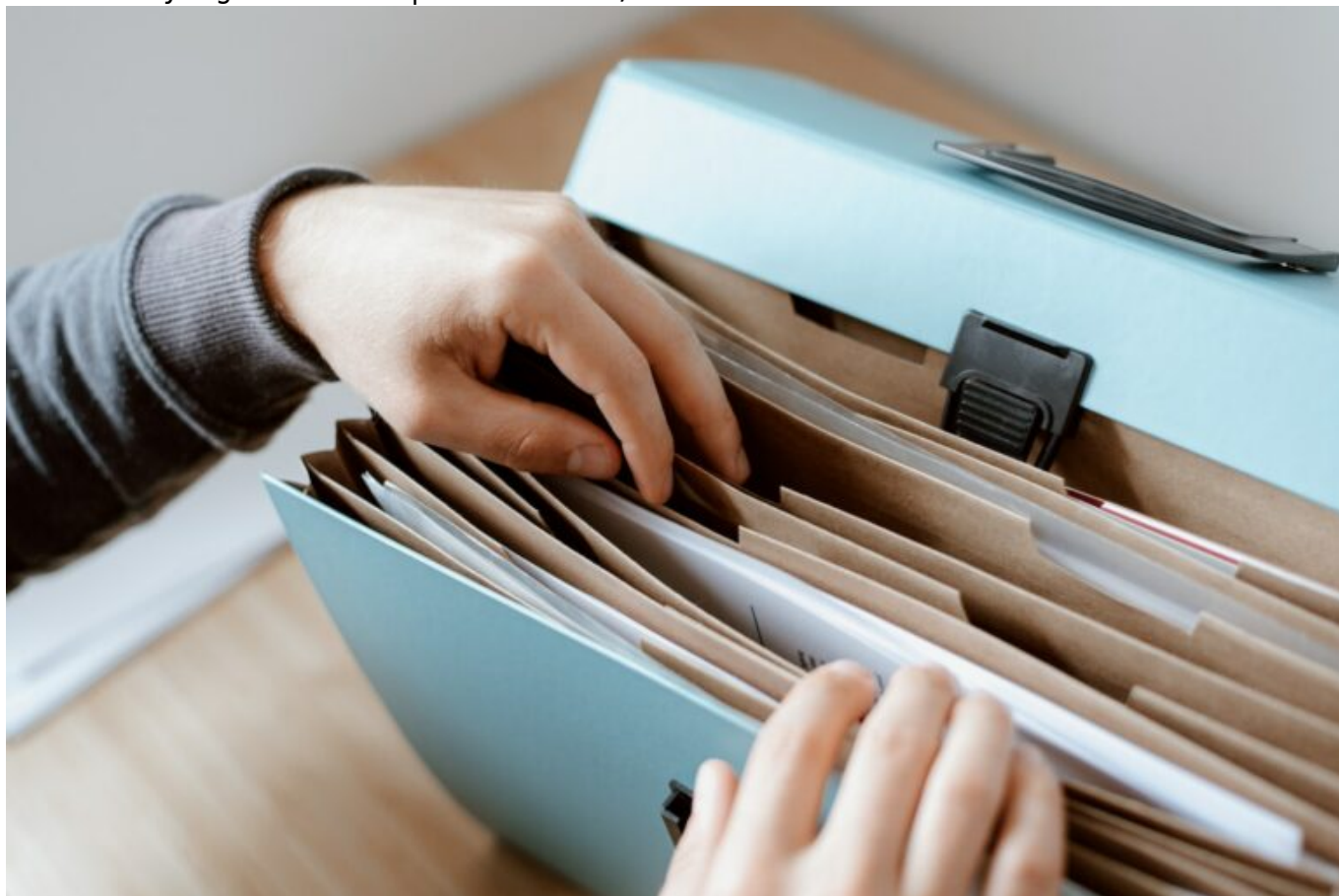


## How to File a Patent in India?

written by Agnel Leona | December 3, 2022



A patent is a government-guaranteed statutory right which ensures exclusivity rights to innovations and restricts persons from unfair usage without the prior permission of the creator. Understanding the meaning, importance, and procedures for registering a patent in India and answering the question of how to file a patent in India, becomes important for us to recognise the intellectual property rights of a creator.

By patenting their inventions, creators safeguard their ideas and obtain the right to earn revenue from their unique creations, which thus encourages innovation. It gives an incentive for the hard work and resources invested in creation.

The main criteria to file a patent are that it should be novel, a non-obvious creation and must be capable of industrial application. [\[1\]](#)

Steps to file a Patent [\[3\]](#)

Step 1: Concept inception

The first step to filing a patent application is to document the idea or concept based on which the patent is being filed. The complete disclosure of the creation/ invention of the novel idea must be in accordance with the Patent Act. Section 3 of the Act provides for those subject matters which are not patentable in India and gives an idea about the inventions which would not fall under the category mentioned dismissing eligibility of patentability. With the help of [KSK IP attorneys](#), a non-disclosure agreement can be signed to protect the confidentiality of the creation.

Step 2: Eligibility of creation's patentability

Before filing a patent application, it is important to ensure that the creation is novel and unique to the creator's idea. This would make sure that the patent application that would be filed would be granted and not rejected

based on the grounds of overlapping ideas.

### Step 3: File a Patent Application

As per Form 1, the procedure for applying for the grant of a patent is indicated.

The form is furnished to the government patent office or you can file for a patent application online, after which a receipt is generated with a unique application number. An early-stage provisional specification patent can be filed under Form 2. A complete specification, however, must be completed and filed within 12 months for filing of a provisional patent. Form 28 is submitted in cases where a small entity or start-up company files for a patent as per the fee mentioned.

### Step 4: Application Status

Rule 24 states that the period for which the patent won't be open to the public is 18 months after it has been filed. An early request for publication can be requested as per Rule 24 A with fee payment as per Form 9 under section 11 A.

After the publication of the application, it can be opposed as a pre-grant opposition may be made in writing by way of opposition to the Controller against the patent for any grounds mentioned in Section 25(1). After which, based on the merits of the opposition, a decision is taken.

### Step 5: Patent Examination request

After the application is made and responded to, the applicant must file a request for examination within 48 months from the date of filing as per Form 18. The patent controller gives the application to a patent examiner who verifies that the criteria of novelty and non-obviousness are met in addition to its industrial applicability, after which a First Examination Report is issued.

### Step 6: Responding to objections

The applicant must respond in writing to all the objections received from the patent office in the FER (First Examination Report) where patentability is proved. If the patent office is not satisfied, a 12-month duration is given to respond to the FER.

### Step 7: Grant of Patent

After all the objections are addressed, the application for a grant of patent is made if all such requirements are met. The patent journal publishes the grant of such a patent and is updated from time to time.

### Documentation required to file a patent application [\[2\]](#)

The list of documents to be filed to register a patent in India can be quite exhaustive. Patent filing can be done by yourself; however, it is advisable to initiate such a tedious process through attorneys. The practice and expertise at KSK ensure a smooth flow. The team of IPR attorneys at KSK assists with document vetting without any mistakes. Doing the process by yourself may get complex, and the patents may be rejected on technical grounds if there are any mistakes in the following procedure.

The list of documents required is as follows:

#### 1. Form 1: Application for grant of Patent

Under the Patents Act, of 1970 and the Patent Rules of 2003, sections 7, 54, and 135 and Rule 20(1) mention the requirements of this form. The form contains details like the name and address of inventors, applicants, declarations, and information pertaining to the patent application filed for the current creation.

2. Form 28: Application for small entities and start-ups  
This form provides the benefit of filing an application for a patent to small entities and start-ups.
3. Form 2: Provisional specification  
As per Section 10 and Rule 13 of the Patent Act and Rules, this form is filed to furnish patent specifications in cases where they apply for a provisional patent to be received before the grant of a patent.
4. Form 3: Undertaking and statement pertaining to foreign filing  
Since India is a party to the Paris Convention which ensures patent rights in any member country, this form furnishes information about the patent applications that may be filed in other countries. As per section 8 and Rule 12 of the Act and Rules, this form ensures that clauses as per the patent cooperation treaty are met. This additionally acts as an undertaking that the patent office in India is always informed about the corresponding applications filed outside the country.
5. Form 5: Declaration of inventorship  
As per Rule 4.17 of the Patent Rules, this application ensures that the inventors have knowledge of the current patent application. This declaration is filed with the Indian Patent Office.
6. Form 26: Power of Attorney  
As per Rule 3.3 of the Patent Rules 2003, when an application is filed through a KSK attorney, this form assigns the power of attorney to the patent agent for communication of the process of the patent application on behalf of the applicant. This would ensure that the process is being conducted in accordance with legal provisions and by experienced agents.
7. Form 18: Request of Examination  
This form is submitted for the request of examination. It is important to note that the patent filings can be done via the online patent application filing system on the website "www.ipindia.nic.in" or at the physical locations of the patent offices in Chennai, Delhi, Mumbai, and Kolkata. The main question on how to apply for a patent in India and the steps to file a Patent is answered in this section.

#### Conclusion

An average duration of 3-5 years is taken for the grant of a patent. A patent in India is granted for a term of 20 years from the date of filing, after which it can be renewed.

The cost for filing a patent in India may consist of government fees and professional charges, where the government fees are furnished with the authorities for the forms and approvals. The professional fees may depend on the agency of your choice. The practice at KSK ensures a reasonable price for the diligent documentation and legal assistance provided for the applicants. It may vary from an estimate of Rs. 4,000 or more, depending on the jurisdiction and requirements of the applicant.

Oftentimes, when clients present the question of how to apply for a patent in India? Or the procedure to register a patent in India, KSK provides fast and thorough guidance to all its clients and helps in completing the patent procedure in compliance with all dynamic legal requirements, keeping in mind the latest amendments and rules to the Patent Rules of 2021.

[1][https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final\\_FREQUENTLY\\_AS\\_KED\\_QUESTIONS\\_-PATENT.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_FREQUENTLY_AS_KED_QUESTIONS_-PATENT.pdf)

[2]<https://ipindia.gov.in/form-and-fees.htm>

[3]<https://www.meity.gov.in/content/patents>

Also read [Patent Registration Process in India: A Comprehensive Guide to Filing and Prosecuting Patent Applications](#)