



## What is Patentable?

A New or Novel product or process, which is Non-obvious or Inventive to a person skilled in the art, and has Industrial Application i.e. can be used or made in some kind of industry.

## What is not Patentable?

- An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

*Explanation.*—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;

- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- A method of agriculture or horticulture;
- Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products. Plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- A mathematical or business method or a computer programme *per se* or algorithms;
- A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- A mere scheme or rule or method of performing mental act or method of playing game;
- A presentation of information;
- Topography of integrated circuits; and
- An invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

## What is Patent?

A patent is an exclusive right or monopoly granted for an invention, limited to a time period of 20 years, either for a product or a process that provides in general provides a new way of doing something, or offers a new technical solution to a problem, essentially with a significant improvement over the prior art. The exclusive right or monopoly includes limited rights for making, using, selling, offering for sale and/or imports any product or technology.

### KEY SERVICES

Pre-Filing Services - Prior Art Search, Patentability Search and Technology Search Studies.

Post-Filing Services - Freedom to Operate Report, Claim Mapping and Validation-Invalidation Search.

Drafting and Filing Services - Drafting patent applications on the basis of our client's objectives, the commercial value and growth potential of the invention, and the target markets

Patent Valuation - Strategies for achieving growth and expansion, licensing, sale, and acquisition

## How to determine novelty of an invention?

Novelty is one of the foremost requirements of patentability. An invention must be new or must not be in public use or known by others. In most countries the invention must be new at the time of the filing of a patent application known as the absolute novelty, while in some other countries, the invention must be new at the time of its creation. Therefore, any document scientific or otherwise, traditional knowledge written or otherwise present in the public domain constitutes prior art.

## How to determine Non-Obviousness/Inventive Step?

Inventive step or non-obviousness is another step in requirement of patentability. The obviousness or inventiveness is a relative term, therefore inventiveness is measured from the view point of a person with ordinary skill “in the art” (the scientific/technical field of the invention). It simply means that if any person of average skill in the relevant scientific/technical field is able to put together different pieces of known information and from them arrive at the same result, without any undue diligence, then the invention lacks obviousness or inventiveness.

### Fees and cost of patent filing in India

	Natural Person (Individual Inventors)	Other than Natural person (companies)	
		Small Entity (SE)	Other than SE
Application for grant of patent	1600	4000	8000
Early publication fee (Optional)	2500	6250	12500
Request for examination of patent application	4000	10000	20000

## Definition of a small entity

Rule 2 of the Patent Rules, 2014, to qualify as a small entity, an applicant who is engaged in the manufacture or production of goods pertaining to any industry should not have an investment limit over 10 crores ( approx USD 1670000).

Similarly, an applicant who is engaged in providing or rendering services classified under the Micro, small and medium enterprise development Act, 2006, should not have an investment limit over Rupees 5 crores (approx USD 835000).

Further, according to rule 2 of the Patent Rules, 2014, while calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices, and other such things as specified by notification under the Micro, Small and Medium Enterprise Development Act, 2006, shall be excluded.

\*The views expressed in this article are those of the author.