



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution- Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

UNDERSTANDING THE INDIAN PATENT ACT, 1970

~Ms Shagun Ranjan Kumar

INTRODUCTION:

In the era driven by creativity, technology, experiment, and innovation, Patent law plays an important role in protecting creativity and invention through Intellectual Property Rights (IPRs), as patent is major part of IPRs and encouraging other in developing and research and to share their invention with the world. In India, patent law is primarily governed by the **Indian Patent Act, 1970**.¹ Brought to maintain a balance between right of the inventors and the general welfare of the public from that invention. Initially act was made govern only the process of making chemicals, drugs, and food, not the product, so the government could work for public welfare. But after 2005, as India joined the WTO (World Trade Organisation) to comply with global standards and agreement major changes were made through amendments as it extended the patent protection to products in the field of technology.²

EVOLUTION OF PATENT LAW IN INDIA:

The earliest data of patent law in India is Act VI of 1856, which was made by the British law in the colonial period.³ It was later repealed in 1859, Act XV was passed, and later in 1872, 1883, and 1888, amendments were made. Before the independence of India, it was governed by the Patents and Designs Act, 1911, which was also influenced by British priority, especially in the matter of medicine, drugs (pharmaceuticals).⁴ By this act, foreign companies dominated

¹ The Patents Act, 1970 (India).

² The Patents (Amendment) Act, 2005 (India); Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994.

³ Act VI of 1856 (India).

⁴ The Patents and Designs Act, 1911 (India).

the drug market in India. The Government of India appointed the Justice N. Rajagopala Ayyangar Committee to recommend revisions to the patent law to tailor the national needs.⁵

⁶Based on this recommendation, the government enacted the Indian Patent Act, 1970.⁷

DEFINITION OF PATENT

Patent is defined in section 2(1)(m) of the act, but there's no as such one line definition, but through section 2(1)(m) and section 48, patent is defined as statutory right granted by the government to an inventor for an invention, giving the patentee exclusive rights to make, use, sell, or import the invention for a limited period of 20 years, subject to the provisions of the Act.⁸ A patent is like a special power of a “no copying” sticker the government gives to someone who invents something new and useful.

PATENTABLE PRODUCT

A low-cost portable water purifier that removes heavy metals using a new nano-filter can be patented.

A fuel-efficient motorcycle engine design that increases mileage by a novel combustion method can be patented.

PATENTABILITY CRITERIA

To obtain a patent, the primary unit is the invention, which is defined in Section 2(1)(j) and inventive steps in Section 2(1)(ja) as mentioned, a new product or process involving an inventive step and capable of industrial application,⁹ i.e.

- Novelty: entirely new invention
- Inventive step: steps should also be new, minor changes to the steps would not be considered and should not be too obvious for a person in the same field.¹⁰
- Industrial applicability: should be usefully applicable for industrial purposes of the field, if not, then not qualified as a patentable product or process.

⁵*History of Indian Patent System*, Eiger Tech (Dec. 14, 2023), <https://www.eigertech.in/history-of-indian-patent-system/> (last visited Feb. 27, 2026).

⁶ *An International Guide to Patent Case Management for Judges: India*, World Intell. Prop. Org. (WIPO), <https://www.wipo.int/patent-judicial-guide/en/full-guide/india/6.1.2> (last visited Feb. 27, 2026).

⁷ N. Rajagopala Ayyangar, Report on the Revision of the Patents Law (1959) (India).

⁸ The Patents Act, No. 39 of 1970, §§ 2(1)(m), 48, INDIA CODE (1970).

⁹ The Patents Act, No. 39 of 1970, §§ 2(1)(j), 2(1)(ja), INDIA CODE (1970).

¹⁰ *Novartis AG v. Union of India*, (2013) 6 S.C.C. 1 (India).

These are the basic criteria to be fulfilled to obtain a patent for any products, methods/processes, improvements, software, and pharmaceuticals, etc., but other than these, it should fall under patentable subject matter.¹¹

NON-PATENTABLE INVENTIONS

Mentioned under sections 3 and 4, the act clearly excludes below subject from patentable subjects for the welfare of people.¹²

- Discoveries of natural substances and resources
- Mathematical or business methods or scientific theories
- Methods of medical treatment
- Atomic energy-related inventions
- Traditional methods

TERM OF PATENT PROTECTION

Mentioned in Section 53 of the Act,¹³ before 2002, patents under the Act were not uniform for all the fields, like 14 years for general inventions and 5 or 7 years for food, medicine, and chemical process patents, but after India joined the WTO to comply with the TRIPS agreement¹⁴ Patents (Amendment) Act, 2002 was made and through this uniform patent term of 20 years from the date of filing was implemented irrespective of fields i.e. all field of technology.¹⁵¹⁶

PATENT APPLICATION AND EXAMINATION SYSTEM

The Act have structured and multi-stage procedure to make sure patents are granted only after proper scrutiny.¹⁷ The process broadly includes:

¹¹ *Indian Patent Act 1970: History, Features, Amendments & Significance*, Testbook, <https://testbook.com/ias-preparation/indian-patent-act> (last visited Feb. 27, 2026).

¹² The Patents Act, No. 39 of 1970, §§ 3–4, INDIA CODE (1970).

¹³ The Patents Act, No. 39 of 1970, § 53, INDIA CODE (1970).

¹⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 33, Apr. 15, 1994, 1869 U.N.T.S. 299.

¹⁵ Todd Gerety, *When Does My Patent Expire?*, Gesmer Updegrove LLP, <https://www.gesmer.com/publications/when-does-my-patent-expire/> (last visited Feb. 27, 2026).

¹⁶ The Patents (Amendment) Act, No. 38 of 2002, INDIA CODE (2002).

¹⁷ The Patents Act, No. 39 of 1970, §§ 6–15, 11A, 11B, INDIA CODE (1970).

1. Application Filing – The inventor or applicant files a patent application with the prescribed specifications for one invention only.
2. Publication of Application – The application is published after 18 months from the date of application filing.
3. Request for Examination (RFE) – The application is examined only after a formal request is made
4. Examination and First Examination Report (FER) – The Controller examines the application for novelty, inventive step, industrial application and compliance with the Act.
5. Grant or Refusal of Patent – If objections are satisfied, the patent is granted; otherwise, it may be refused.

COMPULSORY LICENSING (PUBLIC INTEREST SAFEGUARD)

One of the most distinct features of the act is the provision of Compulsory Licensing under Section 84-92, under which the Controller may grant a license to a third party without the patentee's consent in certain circumstances.

- Reasonable public requirements are not met or satisfied.
- The patented invention does not work under territory of India.
- The patented invention is not available at an affordable price for the general public.
- In case of a public health emergency.

And according to Section 90 that patentee does not lose the ownership of the patent and is entitled to royalty as determined by the Controller.¹⁸ For the welfare inclined.

In *Bayer Corporation v. Natco Pharma Ltd.*(2012). In 2012, India issued its first compulsory license to Natco Pharmaceuticals for Bayer's patented anti-cancer medication *Sorafenib Tosylate (Nexavar)*. The Controller of Patents decided that Bayer did not fulfil the reasonable demands of the public, set unaffordable prices for the drug, and insufficiently worked the patent in India. Natco Pharmaceuticals was permitted to manufacture the drug at a significantly lower price, with a 6% royalty payment to Bayer.¹⁹

¹⁸ The Patents Act, No. 39 of 1970, §§ 84–92, 90, INDIA CODE (1970).

¹⁹ *Bayer Corp. v. Natco Pharma Ltd.*, Compulsory Licence Application No. 1 of 2011, Controller of Patents (India Mar. 9, 2012).

RIGHTS OF PATENT HOLDER (PATENTEE)

The patentee enjoys the exclusive rights mentioned in Section 48 of the Act.²⁰

These rights include –

- Right to make the patented product
- Right to use the patented invention
- Right to sell or offer for sale the patented product
- Right to license or assign the patent to others
- Right to sue for infringement and seek remedies.

In the case of a process patent, the patentee has the exclusive right to prevent others from using the process and the product obtained from the process.²¹

Other than these, the invention should be locally produced and manufactured in India²²

CONCLUSION

The Indian Patents Act of 1970 is a law that helps people who invent things. It makes sure they are protected and that everyone can benefit from their inventions. It says that companies have to make their inventions available to people who need them. The Patents Act, 1970, is a law that keeps changing so it can keep up with technology

²⁰ The Patents Act, No. 39 of 1970, §§ 48, 104–108, INDIA CODE (1970).

²¹ Fiveable Content Team, *Patents*, Fiveable (last updated Sept. 2025), <https://fiveable.me/entrepreneurship-how-to-successfully-start-a-new-business/unit-5/patents/study-guide/tE5WtH2LI029egu7>. (last visited Feb. 27, 2026).

²² Aishwarya Agrawal, *Overview of the Patents Act, 1970*, LawBhoomi (Oct. 4, 2025), <http://lawbhoomi.com/overview-of-the-patents-act-1970/> (last visited Feb. 27, 2026).