

# Patents for Startups in India

A brief reference guide



**Head Office** C44 First Floor, Sector 2, Noida



**Call Us** +91-0120-4328026



**Email us** [info@arcticinvent.com](mailto:info@arcticinvent.com)

# TABLE OF CONTENTS

<b>Patents – An Introduction .....</b>	<b>2</b>
What is a patent?	2
Patent “Terminologies”	5
Patent pending vs. Patented	5
Patents Or Utility Patents	5
Utility Model	6
Design Patents Or Design Registrations	6
Maintenance Fees	6
Can I patent this?	7
Don’t try to patent these...	8
Can anybody apply for a patent?	9
<b>Patents for Softwares, SaaS, and Apps .....</b>	<b>10</b>
Difficulty in getting software patents in India	11
Some precautions for Software patent applications in India	11
<b>Patent filing and registration process in India .....</b>	<b>12</b>
Patent offices in India	12
Patent registration process in India	12
<b>Filing Patents around the world .....</b>	<b>13</b>
No. You cannot get a Global patent	13
Before filing patents in other countries	13
Patent Cooperation Treaty	14
<b>Mythbusting .....</b>	<b>15</b>
<b>Some Incentives for Startups in India .....</b>	<b>18</b>
Start-ups Intellectual Property Protection (SIPP)	18
National Intellectual Property Rights (IPR) Policy	18
Contact us	19

# Patents

## An Introduction

### »» What is a patent?

A patent is a form of Intellectual Property Right.

When we buy a house or a car, it belongs to us. Therefore, you can use the house or the car. And this automatically stops others from using your house or car.

**Patents are nothing like a house or a car.**

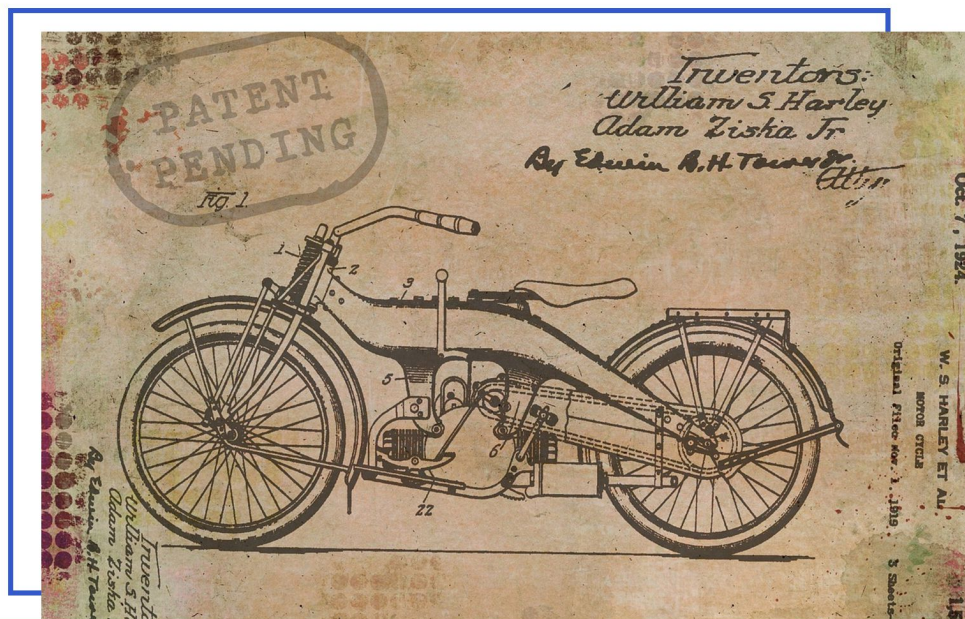
**Firstly**, every patent is unique in the world, and protects one invention. You may file the same invention in multiple countries, but the invention remains unique and all patents are part of one Patent Family.

**Secondly**, patents give you the right to stop others from using your invention. This does not mean you can use your invention!!!

**Thirdly**, unlike a house or a car, you have to actively search for people using your invention (it may not be very evident). And then file a case to stop them from using your invention.

**Fourthly**, the value of a patent increases as the invention is used more.

And finally, patents expire. They last for 20 years from the date of filing. **They cannot be renewed.**



## »» Patents are very valuable, more so for startups that are launching new products/ technologies in the market.

Some reasons why startups should apply for patents:

- 1 Signal to customers that they are buying a unique product.
- 2 Differentiate from competitors with “Patented Technology”
- 3 Use “Patented Product” in marketing.
- 4 Attracts investment from venture capitalists
- 5 Helps in stopping theft by larger rivals, an investor or licensee
- 6 Creates niche markets
- 7 Help build portfolio for licensing deals
- 8 Better profit margins for a unique product
- 9 Helps start-ups to form joint ventures and R&D partnerships
- 10 Patent portfolios increase the chances of the acquisition of a start-up.





Typically, patents are solutions to technical problems.

Patents are exclusionary rights. An authority (like the government or patent office of a country) grants a patent for an invention. The invention may be a minor improvement of existing product, technology, process, or chemical composition. Or the invention may be something completely new created by the inventor.

And using a patented invention, knowingly or unknowingly, is called infringement. The patent owner can sue you for infringement.

# Patents

## Terminologies

### »» Patent Pending vs. Patented



There are some fundamental differences between a patent pending (patent application) and a patented (product based on a granted patent)

**A patent application is patent-pending, and a granted patent is an actual patent.** An application is patent-pending until granted. It shows that there is a claimed invention or that an idea has a pending patent which can come into force if granted. In comparison, a granted patent allows you to sue another party for infringing on the claims of a patent. The claims are part of your invention in a patent document on which you have the patent rights.

**An application is not final, but a granted patent is.**

A patent application does not mean that a patent will lead to a patent grant. It may receive objections from an examiner or a third party that may not meet its conditions for patentability. A granted patent is complete and final; you cannot make changes to the claimed invention.

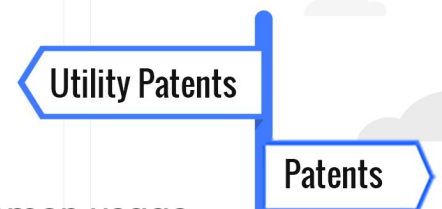
**The power that a patent application gives vs a granted patent.**

A patent application alone does not give the inventor enforceable rights. You cannot stop others from making, using, or selling a similar invention. A granted patent is enforceable, and you can sue anyone who infringes your patent.

### »» Utility Patents or Patents

Utility patents are what are known as “patents” in common usage. You can patent any invention that has novelty and some form of industrial use as a utility patent.

**Life:** 20 years from the date of earliest filing.



# Patents Terminologies

## »» Utility Model

Some countries like Germany and China also grant utility models to holders (inventors). They are not patents and are less strict in scrutiny, e.g., in the inventive step.

The kind code "U" at the end indicates a utility model.

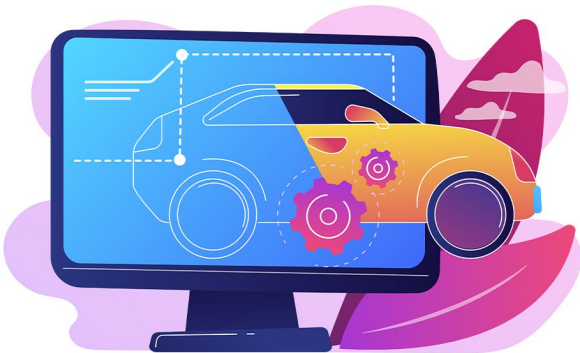
**Life:** Usually between 6 to 15 years.



## »» Design Patents or Design Registrations

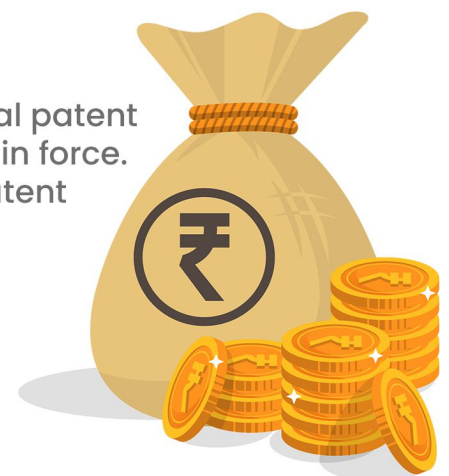
They protect the distinctive appearance or the design of manufactured objects. Most famous examples are the cases between Apple and Samsung for the design of their tabs.

**Life:** In India, ten years from the registration date. Inventors can extend the ten-year term on request by up to five years before the expiry.



## »» Maintenance Fees

The applicant must pay a renewal fee as per the local patent laws every year or in a lump sum to keep the patent in force. Non-payment of maintenance fees will deem the patent abandoned.



# Can I patent this?

»» To be patentable an invention should meet 4 criteria



## Novelty:

There should be an element of the invention that is new in the world. Yes!!! New in the world.



## Non – Obvious:

The invention should not be a simple combination of existing things. The combination should give some unique or unknown or surprising results.



## Industrial Applicability or Usefulness:

The invention should have use in the industry or day to day life.



## Patentable Subject Matter:

The invention should not be restricted by law.

Having an idea does not guarantee a patent. Moreover, when a person files for a patent, the application has to undergo an examination. The examiner checks whether the invention relates to a product or process.



# Don't try to patent these...

## »» In India, some inventions are not patentable as per law.

- ✘ Useless machines, harmful inventions, illegal machines are not patentable for obvious reasons. And other inventions that can cause harm to the public are not patentable.
- ✘ Scientific discoveries, mathematical formulas, and other similar efforts that uncover existing mysteries of the universe are not patentable.
- ✘ Known chemicals, new properties of known chemicals, a simple mixture of known chemicals are not patentable.
- ✘ Animals, plants, methods of agriculture, breeding techniques, seed varieties etc., are not patentable.
- ✘ Methods of medical treatment, surgical procedures, treatment steps to treat patients are not patentable.
- ✘ Business methods are not patentable.
- ✘ Artwork, music, videos, performance, movies, TV programs, method of playing games, presentation, IC circuit topography, are not patentable.
- ✘ Traditional knowledge of India is not patentable.
- ✘ Inventions related to atomic energy are not patentable.
- ✘ Computer programs and software are not patentable, per se. ("Per se", is a loophole, and very useful in helping get software related inventions patented. More about this in the next section.)

**Note:** The Indian Patent Office (IPO) deals with each case objectively, there may be exceptions as per the case.

# Can anybody apply for a patent?

»» Yes. Provided they are the 'true and first' inventor of an invention.

an inventor may jointly file a patent application with any other person.

Any person from any country can apply for a patent application in India.

In the case of a deceased inventor, a legal representative may file for the patent.



# Patents for Softwares, SaaS, and Apps

Software, SaaS applications, Mobile applications or software, “per se” or software as such is not patentable in India. In India, the Indian Patent Office (IPO) considers software inventions under the category Computer Related Inventions (CRI) for a patent. **Software as a combination of hardware & software is patentable.** The software alone, as a program as such, is not patentable. If the software is novel but not patentable subject matter, then start-ups should go for copyright protection. **Developers and companies can protect software code under copyrights.**

In the case of mobile apps, the inventor must consider which element(s) of the app they should protect from copying by competitors. Different IP rights can cover different kinds of aspects of the app. E.g: A patent or copyright can protect the software in conjunction with the hardware that runs the app. Trademarks will protect a unique logo or name of the app. **The key is to decide which aspects of the app are worth patenting and which require trademark or copyright.**

In the case of Mobile Apps, due consideration to business longevity should also be taken into account. Most Apps go out of trend after 6 months. Patents take more than 12 months to get granted. In such cases, cost and time taken for getting a patent may be more than the business can spend.





## Difficulty in getting software patents in India

- Section 3(k) of the Indian Patents Act excludes “computer programs per se” or computer programs “as such” from patentable subject matter. Despite this exclusion, a wide range of software is still patentable. Software and computer programs that support the functioning of another device are not per se. IPO considers such inventions for patents.
- Inventors face challenges when the claims of a patent are not clearly defined. There should be a relation between a hardware feature and the computer program, algorithm, or logic. In these cases, the instructions or logic remains a computer program as such.
- The grant of a patent related to software inventions is dependent upon how the invention is described in the patent application. Get help from a qualified patent attorney, with a background in Electronics & Computer Science. This will ensure that the patent application meets the technical requirements to be considered by the IPO.



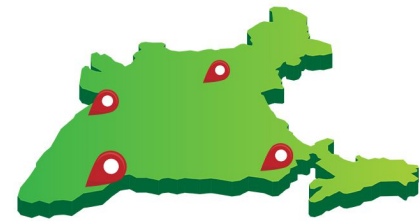
## Some precautions for Software patent applications in India

You can get a patent for your software related invention in India, provided you take some care in preparing the patent application:

- Write the invention in as much detail as possible. People from the software field should be able to understand your write up without referring to other sources. You must give a detailed description of its working, coding, and interface with hardware. Also, state its advantages compared to existing solutions.
- To explain the functioning of the invention, add objects and diagrams to give a better representation. Write down flowcharts if that helps to describe the invention better.
- Get help from a qualified patent attorney or patent agent with a background in Software. They will draft the patent application as per legal requirements. And also ensure that the patent office’s objections are handled properly and in a timely manner.
- Lastly, do help the patent attorney with any technical answers they may require from time to time to respond to any objections from the patent office.

**Note:** USA allows patents for software related inventions, with far less restrictions than India. If you are a startup looking to raise funds in the USA, then having patents in the USA is very important.

# Patent filing and registration process in India



## »» Patent offices in India

Where we can file for a patent depends on the jurisdiction of the applicant. One can apply to the Indian Patent Office at any four offices in New Delhi, Kolkata, Mumbai, and Chennai. Each patent office has its jurisdiction. Criteria such as the domicile of the first-mentioned applicant, place of origin of the invention, or legal/business address of the applicant/company decide the jurisdiction.

## »» Patent registration process in India



The Indian Patent office now allows e-filing or online filing of patent applications via the online application portal [www.ipindiaonline.gov.in](http://www.ipindiaonline.gov.in)  
The general procedure of registering a patent in India is:

1. Invention Disclosure: A detailed writeup of the invention to patent attorney.
2. Perform a check on whether the idea/invention is patentable or not (patentability search)
3. Drafting a patent application
4. Filing a patent application in the Indian Patent Office
5. Publishing the patent application: An application is usually published on its own 18 months after filing. You can also request early publication.
6. Requesting for examination: You must request the patent office for the examination of the application.
7. Responding to objections/feedback from IPO
8. Getting the patent granted / registered.

The inventor's responsibilities do not end here. They must pay the maintenance fee annually. And they should quickly respond to any post-grant objections that may come up once the patent is in force.

# Filing Patents around the world

Through various treaties, agreements, and mutual understanding between countries, it is possible to file patent applications around the world for your inventions. Even if you are a citizen of India, you can get a patent granted in the USA. In this section, we highlight some of the routes through which you can get patents in other countries.



## No. You cannot get a Global patent

Patent protection is a territorial form of intellectual property. Rights granted by a patent depend on the laws of the country. Since patent laws are country-specific, there is nothing called a global patent. A patent filed at the Indian Patent Office only will give rights to the inventor in India only. Thus you must apply in each country where you wish to enforce the patent.

Although there are many regional treaties for filing in many countries, it is workable to file for the Paris Convention or a PCT application. You must then name all the countries where you wish to get a patent on your invention.



## Before filing patents in other countries

The following questions will help you decide before filing an patent application in other countries:

- Which country will be suitable for manufacturing the product? You must analyze the logistics, market value, labor and investment capital, etc., in the country.
- Where are your competitors based? What is the best pricing, and what is the market size in that country?
- Is it worth patenting in a country where the legal system is not strong enough?
- Are there other benefits like funding for startups? Or legal stipulations to have a patent in that country?

Patent filing in other countries can be a costly affair. It is prudent to think through the benefits before venturing out to file a patent application.

## »» Patent Cooperation Treaty

Single window to file patent applications in other countries



As a start-up, if you plan to expand and launch your product in many countries, it is a good idea to file patent applications through Patent Cooperation Treaty (PCT). PCT is an international patent application governed by the World Intellectual Property Organization (WIPO). PCT makes it easy and initially cheap to file a single patent application designating many countries. You can do this by filing an “international patent application”, also called a PCT application.

You can file a PCT application in India by naming India as a designated authority. You must also file a national phase application in India. Through the national phase application, you can enter your patent application to over 100 member countries within 30 or 31 months from the date of the first filing of the application.

**Note:** PCT is a patent application. It does not give you any rights. Each countries’ patent office takes over the grant process of a PCT application after it enters a country. The fees for each country has to be paid separately, and a patent attorney will have to be hired to communicate with the individual countries’ patent office.

# Mythbusting

Here are some common Myths about patents.

## MYTHS

## FACTS

**We must have made our invention before patenting it.**

You can file a provisional application that requires the applicant to furnish specific details. These include the applicant's details, the title of the invention, drawings (if possible), invention specifications explaining how to make the invention. You do not have to include claims in the provisional application. Thus, it is not necessary to have the invention ready, but it must still be novel.

**Our patent must match our product design or specification.**

You do not have to fix the design of your application as it limits the value of your patent both technically and commercially. A good patent application will consist of its scope in the use of another field of application.

**Patent-pending gives me the right to enforce it.**

A patent-pending does not stop a competitor from making, using, or selling your invention. There is a threat only if the invention comes into force through a patent grant.

**Others cannot challenge an already granted patent.**

Patents that are granted often face post-grant opposition too. There may be objections when a competitor finds the use of your invention, and they know that a similar technology exists.

**Our patent means we have all the power in the area of technology.**

Merely holding the patent for an invention does not automatically entitle you to use it. You must be more careful if there are other parts used in the technical invention or process. You must seek licensing or permission to use patented features from other inventors.



# Mythbusting

## MYTHS

## FACTS

A granted patent will prevent anyone from making our invention.

It is the responsibility of the assignee (owner) of the patent to keep in check, track and sue a potential infringer of the invention. As a proactive measure, patent holders can mark their products with the patent number.

Patents takes too long to get granted.

A patent is one of the essential tools for protecting your invention. Standard times may take up to 2.5 to 3 years from the priority date, i.e., the first date of filing an invention anywhere. Under the Startup schemes promoted by the government, there are options for accelerated examination of the patent application. And you can get the patent as soon as 12-18 months.

There's no worry if there is a competitor's patent issued after the launch of your product.

It is unwise to assume that the grant of somebody else's patent causes no harm to us after launching our product. Any evidence that shows that your product came into use after the patent will lead to an infringement lawsuit. If the filing date is before the launch of your product, you will be infringing on the patent. Infringement suits lead to the payment of large compensations.

We are not infringing any patent because we did not copy any invention.

You can be guilty of infringing a patent even if you had no intention of doing so or were unaware of its existence. Thus you must conduct a prior art search and file an invention as soon as you are sure of its novelty and industrial use.

# Mythbusting

## MYTHS

## FACTS

Others cannot sue us for infringement if our product comprises parts made by our suppliers.

Anybody with a patented product can sue you for infringement. An infringer is one who sells, uses, or makes an invention without permission from the patent holder.

We use old technology so that we won't be infringing any patents.

Old technology could be the basis of significant improvements in a product or invention. A lot of innovations are minor improvements over older available technologies. Inventors can still sue you based on old technology for patent infringement.

I can't get a patent for a minor improvement to a technology.

Even minor improvements that are novel and solve a problem can get a patent. Most patented inventions are, in fact, modifications to existing technology.

Invention can be patented even if it is shown publicly.

No, you cannot patent an invention after disclosing it in public. Patents are given when the invention has at least one element that is new in the world. If you show your invention to the public, and someone takes a photo, that becomes proof that the invention was known before the patent was applied. To be safe, file a patent application before talking about your invention publicly.

# Some Incentives for Startups in India

The Indian Government considers a start-up as an entity incorporated or registered in India under the “Start-up India: Stand-Up India” initiative. The definition of a startup is defined by the government, and companies should register as a startup to benefit from Government schemes.

There are some incentives for start-ups to encourage innovation and promote the protection of their IP rights.

## »» Patent reimbursement by State Governments

**Many state governments** in India have a Startup Cell. These cells actively support startups and provide knowledge, incentives, and funding support. Many state governments also encourage startups to file patents by reimbursing the cost of filing patents.

**For example**, Karnataka Startup Cell gives several financial incentives. It will reimburse up to INR 2 lakh for every granted Indian patent and INR 10 lakh for a foreign patent. You will receive 75% of this reimbursement when you file and the remaining after the grant of patent.

**To qualify**, you must be a startup registered with the Karnataka Startup Cell having a valid registration number. Physical or virtual incubation is necessary. You can find details of eligibility, application and document requirements at the **Startup Karnataka website**.

([www.startup.karnataka.gov.in/incentives](http://www.startup.karnataka.gov.in/incentives))

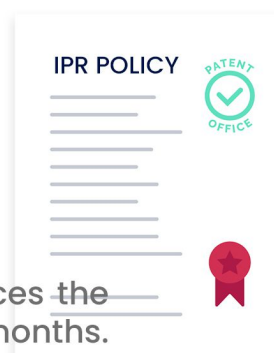
**Similar schemes** are available in many states. Visiting the particular states Startup policy website will provide more details.

## »» National Intellectual Property Rights (IPR) Policy

- This policy aims to simplify the patenting procedure. It reduces the average time taken to examine a patent from five years to 18 months. The IPR scheme also gives financial assistance on grant of patent and registration of geographical indication/trademark as follows:

Domestic Patent: INR 1 lakhs  
Foreign Patent: INR 5 lakhs  
GI Registration: INR 2 lakhs  
Trademark: INR 0.10 lakhs

- You can also avail up to INR 65 lakhs per Centre for setting up an IP Facilitation Centre. To be eligible, you must be registered with the MSME data bank and have a valid UAM/Udyam Registration Certificate. **You can apply through the online portal** [mymsme.gov.in](http://mymsme.gov.in)



## Contact Us



**Head Office**

C44 First Floor, Sector 2, Noida



**Call Us**

+91-0120-4328026



**Email us**

[info@arcticinvent.com](mailto:info@arcticinvent.com)