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A STUDY ON THE FILING PROCEDURES OF PATENTS IN INDIA

S. Yashwont Kiran

ABSTRACT

This paper deals with the study on the filing procedure of patents in India. The law relating to the intellectual property deals with the patents which protects the rights of the inventors who invents any kind of invention with novelty, usefulness and non-obviousness. The growth of science and technology had forced the nations to draft the laws relating to patents for the purpose of protecting the technical and creative mind of the inventors or scientists or institutions. Filing of patent in India is a quite long procedure but however India is also one of the signatory States of the Patent Cooperation Treaty (PCT). Since all the countries are marching forward through globalization, it is a basic strategy to file patents in the respective countries where the inventor or the company wants to establish a market. An invention without patent rights in the market is like an insecure invention because there are more possibilities for other people to duplicate and sell the invention in the market and this may lead to the elimination of original inventor from the market, so it is very necessary to file a patent for an invention.

KEYWORDS: Patents, PCT, Inventions, Novelty, Grant, Rights, India

INTRODUCTION

The law of patents is all about inventions with novelty and these patent laws are there to protect the intellectual creativity of the inventor of an industrial property for the purpose of making monetary gain of the invention. The Patent Cooperation Treaty of 1970 gave strength to make a unified protection of filing patents for the inventions in all the signatory States. The recognition of patents gave huge respect and identity to all the inventors and also protected the inventions from the duplications. Patents, designs and trademarks are considered as the industrial property as common. Patent is a exclusive rights given to a person who has made or invented a new and useful invention to the public domain. After the expiration of the duration of patent, anybody can make use of the invention. The owner of the patent can sell his/her invention and also has the rights to grant licenses to others to exploit the patent. It can also be said that giving importance to patents is like giving importance to the modern civilization because technologies helps the living things to live an improved standard of life. It is not like all the inventions can be patented by a normal person from the public, even patent law have some restrictions to grant patent to certain inventions related to drugs and weapons. Patent is a right given to the inventor to exploit the invention in a financial way by selling the invention to the public domain, if there is no recognition given to the invention then there are more possible ways for the inventor to deal with the invention for personal use. Using an invention by the inventor for the personal use without nuisance is not an issue but selling an invention to the public without patent rights will be an issue to the inventor in a financial way.

A wise inventor applies for the patent rights to his invention to gain profits from it, otherwise even a common layman can duplicate that invention and steals the creativity of the original inventor and makes huge profits from the duplicated invention. Basically the big corporations and institutions can afford to engage in research and development of new products or technologies. It is not important for an invention to be patented. An inventor may use his invention secretly but there are more chances for the leakage of the secret formula of the invention which leads to financial loss to the inventor. The Patents Act, 1970 deals with the provisions which gives the rights to abuse of patents rights by providing for compulsory licensing and even for revoking the patent for non-working.

OBJECTIVES:

- To briefly study and analyse about the filing procedure of patents in India through the Patents Act, 1970.
- To briefly study and analyse about the filing procedure of patents in India through the Patent Cooperation Treaty

CHAPTERISATION:

Chapter I – The Filing procedure of Patents in India through the Patents Act, 1970

This chapter deals with the provisions of the Indian Patents Act, 1970 and it also deals with the PROCEDURE for filing patents in within India. It includes the detailed flowchart for the filing of patents only within India.

Chapter II – The Filing procedure of Patents in India through the Patent Cooperation Treaty

This chapter deals with the filing procedure of Patents in India through the Patent Cooperation Treaty and it includes the rules given under the Patent Rules, 2003. It also deals with the different kinds of patent applications. It also includes the detailed flowchart for the filing of patents in India through the Patent Cooperation Treaty.

CHAPTER I

THE PATENTS ACT, 1970:

The history of Patents Act in India goes back to the year of 1911. The present Patents Act, 1970 came into force in the year 1972, and there were many amendments made on this Act. The Indian Patents Act, 1970 was amended by the Patents (Amendment) Act, 2005 by the parliament of India, wherein product patent was extended to all fields of technology including food, drugs, chemicals and micro-organisms. The Patents Act 1970, which is along with the Patents Rules 1972, came into force on the date of 20th April 1972, replacing the Indian Patents and Designs Act 1911. The Patents Act, 1970 was mostly based on the recommendations of the *Ayyangar Committee Report* which was headed by *Justice N. Rajagopala Ayyangar*. One of the recommendations of the committee was the allowance of only process patents with regard to the inventions relating to the drugs, medicines, food and chemicals.ⁱ

Important Provisions:

Chapter III deals with applications for patents-

Section 6 of this Act deals with the persons entitled to apply for patents which says that true and first inventor only can apply for patents. Getting a patent right for an invention be like first come first serve.ⁱⁱ

Section 7 deals with form of application –

- The application for grant of patents can be made under the **Form 01**, which is mentioned under the second schedule of the patents rules, 2003
- The application can be filed in the patent office only for the invention and it shall be made in a prescribed form and filed in the patent office.
- Each and every international application of an invention under the Patent Cooperation Treaty for a patent, as may be filed designating as India shall be deemed to be an application under this Act, if a corresponding or the next application has also been filed before the Controller in India.

- Every application under this section shall state that the applicant is in possession or the original owner of the invention and shall name the person claiming to be the true and first inventor; and where the person who is so claiming is not the applicant or one of the applicants, the application shall include a declaration or a statement that the applicant of the invention believes the person so named to be the true, honest and first inventor.ⁱⁱⁱ

Section 9 deals with **provisional and complete specifications** –

- The provisional and complete specifications shall be filed through **Form 02**, which is mentioned under the second schedule of the patents rules, 2003.
- An application for a patent is accompanied or must be included by a provisional specification, a complete specification of invention shall be filed within **twelve months** from the date of filing of the application, and if the complete specification of the invention is not so filed, then the application shall be deemed to be abandoned or invalid.
- Where two or more applications relating to an invention in the name of the same applicant are accompanied by provisional specifications of the invention which are cognate or of which one is a modification of another and the Controller is of in an opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow a single or one complete specification to be filed in respect of all such provisional specifications.^{iv}

Section 10 deals with **contents of specifications** –

- Every specification of the invention, whether a provisional or complete, shall describe about the invention and shall begin with a title which is sufficiently indicating the subject-matter to which the invention relates.
- Any specification, whether a complete or provisional; and any drawings which has been supplied shall, unless the Controller otherwise directs be deemed to form a part of the specification of the invention, and references in this Act to a specification of an invention shall be construed accordingly.

- In any particular case relating to an invention, if the Controller considers that an application should be further supplemented by a format, model or sample of anything illustrating the invention or alleged to constitute an invention, such format, model or sample as he or she may require shall be furnished or completed before the application is found in order for grant of a patent, but such model or sample shall not be deemed to form a part of the specification of the invention.
- In case of an international application of patent designating as India, the title, description, drawings, abstract and claims filed with the application of patent shall be taken as the complete specification of the invention for the purposes of this Act.^v
- **Section 11** of the patents Act, 1970 deals with the **priority dates of claims of a complete specification** of the invention which says that there shall be a priority date for each claim of a complete specification of the invention. The priority date means the earliest filing date in a group or family of patent applications. When there is only a single patent application is involved, the priority date would be the filing date of the sole application. If an applicant of patent has filed a number of related patent applications, the priority date would be the filing date of the earliest patent filing that which first disclosed the invention.^{vi}

Chapter IV deals with publication and examination of applications-

Section 11A deals with publication of applications-

- No application for patent shall ordinarily be open to the public domain for such period as may be prescribed by the law or the regulations. The applicant may, in the prescribed manner, request the Controller to publish his/her application at any time before the expiry of the period prescribed.
- The applicant may request the Controller to publish his/her application through **Form 09**, which is mentioned under the second schedule of the patents rules, 2003.
- The application is then usually be published after a period of 18 months. A request to early filing of application of patent can be made along with a prescribed fee.
- In case if a secrecy direction has been given by the applicant in respect of an application of patent under section 35, then it shall be published after the expiry of the period

prescribed under sub-section (1) of the patent Act, 1970 or when the secrecy direction has ceased to operate, or whichever is later.^{vii}

Chapter VII deals with provisions for secrecy of certain inventions-

Section 35 deals with secrecy directions relating to inventions relating to inventions relevant for defence purposes-

- If an application for patent is made before the controller and if the invention is one of a class notified to him by the Central Government as related to any defence purposes, or, otherwise if the invention appears to him to be so similar, he may give directions for prohibiting or restricting the publication of information of the application with respect to the invention.
- Where the Controller gives any such directions under **section 35**, he shall give notice of the application of invention and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice from the controller, shall consider that whether the publication of the details of invention would be prejudicial or create threat to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice and doesn't create threat to the defence, shall give a notice to the Controller of patent office to that effect, who shall thereupon revoke or cancel the directions and notify the applicant accordingly.^{viii}

Section 37 deals with consequences of secrecy directions-

It states that, so long as any directions under **section 35** are in force in respect of an application—

1. the Controller shall not pass an order or doesn't have the rights of refusing to grant the same; and
 2. notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof
- After the publication of applications, the process of request/express request for examination of application for patent must be done by the applicant through **FORM 18**, which is mentioned under the second schedule of the patents rules, 2003.^{ix}

Section 41 deals with **finality of orders of Controller and Central Government-**

- All orders of the Controller of the patent office giving directions relating to the secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court for legal proceedings on any ground whatsoever.^x

Rule 71 deals with **permission for making patent application outside India under section 39**

- The request for permission for making patent application outside of India shall be made in **Form 25** of the patent rules, 2003.
- The Controller shall dispose the request made under sub-rule (1) within a period of 21 days from the date of filing of such request: Provided that in case of inventions relating to defence or atomic energy, the period of 21 days shall be counted from the date of receipt of consent from the Central Government.^{xi}
- Only after receiving the **Request for Examination (RFE)** from the applicant, the controller transfers the patent application to the patent examiner. The request for examination of the patent application has to be made within 48 months from the date of priority or filing whichever is earlier.
- The patent examiner examines and interprets the patent application, and prepares the examination report on the basis of various patentability criteria like:

Patentable subject matter;

1. Novelty
2. Inventive step
3. Industrial application and
4. Specification Enablement

Request for Examination under the Patent Act-

In the Indian patent system, a request to patent office has to be made by the applicant to process the application of patent to the examination stage. **Section 11B** deals with the request for examination. No application for a patent shall be examined by the patent office unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.

A request for examination has to be filed within **48 months** from the date of priority (priority date here is the date of first filing of the invention), Only then the particular application is considered for examination. If it is not filed within the specified time limit the application shall be treated as withdrawn. Hence Indian Patent Act 1970 makes it compulsory to file a request for examination of the patent application. **Rule 24 B** states that the period for the request for examination shall be 48 months from the date of priority or from the date of filing of application.^{xii}

In *Sphaera Pharma Pte. Ltd and Anr. Vs. Union of India & Anr.*, wherein Sphaera Pharma (hereinafter 'Petitioner') filed a writ petition to restore the Indian patent application No. 3584/DELNP/2015. The Petitioner had admittedly failed to file the request for examination (**Form 18**) within the prescribed period of 48 months from the earliest prior.^{xiii}

First Examination Report under the Patent Act-

Once the patent application has been examined, the Patent office issues an examination report to the patent applicant which is generally known as First Examination Report or (FER). The examiner submits the FER to the controller. It usually contains prior arts similar to claimed invention. Prior art here means existing documents before the date of filing, similar to claimed invention. It need not be commercially available. It is just evidence which proves that the claimed invention is already known to the patent office.

The applicant should reply to the objections (if any) and place the patent application in order for the grant within **12 months** from the date of issue of the FER (First Examination Report). In this case too, if the reply to the examination report is not made within prescribed time limit, which is **12 months**, the application is deemed to be **abandoned**.^{xiv}

Chapter V deals with opposition proceedings to grant of patents-

Section 25 deals with opposition to patents-

- The notice of opposition to patents can be made through **Form 07**, which is mentioned under the second schedule of the patents rules, 2003.
- Where an application for a patent has been published but a patent rights has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent.

Proceedings under Pre-Grant Opposition:

- Any person can file a pre-grant opposition by way of a representation to the Controller against the grant of patent based on any of the grounds mentioned above. The representation is required to include a statement, a request for hearing and evidence (if any) in support of the representation.
- The controller generally considers the representation only after a request for examination for that patent application has been filed. After considering the representation, the controller notifies the applicant with a copy of the representation.
- The applicant is required to reply to the notification with his statement and evidence (if any) in support of his application within three months from the date of the notice. The Controller then based on the statement and evidence filed by the applicant either refuses the grant of the patent or asks the applicant for amendment of the complete specification to his satisfaction.
- Finally, after considering the representation and response by the applicant the controller proceeds further by either rejecting the representation and granting the patent with amendments to the complete specification or accepting the representation and refusing the grant of the patent within one month from the completion of above proceedings.

In India, the opposition proceedings take place before the controller general of patents. The major advantage of initiating opposition proceedings with the India patent office is that the whole process is strictly time bound, therefore interested parties do not have to go through lengthy and tedious procedures, which may also involve considerable time till the matter is decided. The cost incurred in opposition is also minimal compared to litigation costs.

Chapter VIII deals with grant of patents and rights conferred thereby-

- The request for the grant of patents can be made under **Form 12**, which is mentioned under the second schedule of the patents rules, 2003.
- **Section 43** deals with Grant of patents which says that where an application for a patent has been found to be in order for grant of the patent and either, the application has not been refused by the Controller by virtue of any power vested in him by this Act or the application has not been found to be in contravention of any of the provisions of the patent Act, 1970, then the patent shall be granted.^{xv}
- Granting of a patent is a form of encouragement for innovations and inventions, and once a patent applicant files for it he or she becomes the exclusive owner of the invention if the patent is granted.
- Filing a patent in India is very important because it restricts the competitors from copying, selling or importing the inventors' creation without their permission, and it is valid for a period of **20 years** from the priority date of application of the patent. A patent, like any other intellectual property, can be transferred or sold by the inventor.
- Basically an invention will be granted patent only when the basic criteria for the inventions are fulfilled. The following are some of the basic criteria needed for an invention for getting patent rights.
 1. Novelty
 2. Non – Obviousness
 3. Usefulness
 4. Patentable subject matter

Chapter XII deals with surrender and revocation of patents-

Section 64 deals with revocation of patents

- **The application for the revocation of patents can be made through Form 19**, which is mentioned under the second schedule of the patents rules, 2003.
- As per the **section 64** of the Patent Act, 1970, the following persons can file the petition in the High Court:
 1. any person interested

2. the Central Government
3. the person making the counter-claim in a suit for the infringement of a patent

- A revocation petition against a patent application can be filed in the Intellectual Property Appellate Board by the interested person or the Central Government, or it can be filed as a counter-claim in a suit for infringement of patent at the High Court.^{xvi}
- To bring in the aspect about jurisdiction of suits of infringement of patent and the corresponding revocation petitions against the patent application, **Section 104** of the Patents Act, 1970 states that no suit of infringement can be brought before a court of law which is inferior to the District Court having jurisdiction to try the suit and in the event of a counter-claim for revocation of the patent made by the defendant, such suit for infringement of patent and the said counter-claim must be transferred to the jurisdictions of High Court.

Chapter VIII deals with the register of patents-

- The application for the registration of names in the register can be made through **Form 23**, which is mentioned under the second schedule of the patents rules, 2003.
- **Section 67** deals with the **register of patents and particulars to be entered therein** which says that there shall be kept at the patent office a register of patents, wherein shall be entered—
 - the names and addresses and other details of grantees of patents;
 - notifications of assignments, extension of period, and revocations of patents; and
 - particulars or the details of other matters affecting the validity or the ownership of the patents as may be prescribed.

The register of patents is open to public inspection and it shall be lawful for the controller to keep register in floppies, diskettes or any other electronic form. A register is a prima facie evidence of any matter entered therein.^{xvii}

LICENSING A PATENT:

A patent owner can give license to others by giving his idea to another and also give rights to the licensee to sell or make the patented invention. The patent holder can control these rights. A license agreement must include upfront payment and royalty percentage. Royalty is the percentage of the money earned from the licensed product over a period of time. **Section 84** deals with **compulsory license** which states that at any time after the expiration of three years from the date of the grant of the patent, any person interested may make an application to the controller for the grant of compulsory license on patent.^{xviii} **Section 88** deals with the **powers of controller in granting compulsory licenses** which states that where the controller is satisfied on an application made under **section 84**, may order the grant of licenses under the patents of such customers of the applicant as he thinks fit as well as to the applicant.^{xix} **Section 85** deals with the **revocation of patents** which states that any person interested may, after the expiration of two years from the date of the order granting the first compulsory license, may apply to the Controller of patent office for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that any other reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.^{xx} **Section 94** deals with **termination of compulsory license** which states that on an application made by the patentee or any other person deriving title or interest in the patent, a compulsory license granted under **section 84** of the patents Act, 1970 may be terminated by the controller of patents, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur: Provided that the holder of the compulsory license shall have the right to object to such termination.^{xxi}

CHAPTER – II

THE FILING PROCEDURE OF PATENTS IN INDIA THROUGH THE PATENT COOPERATION TREATY

PCT INTERNATIONAL APPLICATION

The **Patent Cooperation Treaty (PCT)** is an international patent law treaty and it was concluded in 1970. It provides a unified procedure for the purpose of filing patent applications to protect inventions in each of its signatory States. A patent application filed under the PCT is called as an **international application**, or **PCT application**. The PCT application does not provide for the grant of an international patent, but it paves the way for a streamlined patent application process in many countries in a single time. It is governed by the Patent Cooperation Treaty and can be validated in up to 152 countries. Filing this application would protect an invention from being duplicated in these designated countries. Finally, at the period of 30 months from the filing date of the PCT application or from the earliest priority date of the application if a priority is claimed, the international phase ends and the PCT application enters into the national and regional phase. However, it's the discretion of the national law to fix time limits which expire later than the period of 30 months.

Unlike other applications, PCT application renders the application in a time-frame of **30-31** months to enter into various countries from the international filing date or the priority date, thereby affording the applicant with additional time to access the actionable of the invention.

Apart from this, it renders the following other benefits:

- The PCT application provides an International Search Report citing prior art, which discloses whether or not the invention is novel.
- It provides an option for requesting an International Preliminary Examination Report, which is a report that contains eligibility on the patentability of the invention.
- The aforementioned reports always facilitates the applicant to make more informed choices early in the patent process, as he/she can amend the application to deal with

any conflicting material. Also, the applicant would receive a partial view of the patentability of the invention before incurring charges for filing and prosecuting the application in each country.

An applicant from India can able to file this application at:

- The Indian Patent Office (IPO) - receiving office.
- The International Bureau of WIPO, either after availing a foreign filing permit from Indian Patent Office or after six weeks and 12 months of filing an application in India.

PCT NATIONAL PHASE APPLICATION

It is essential for an applicant to file a national phase application in each of the country wherein protection is sought for. The time for filing the same is scheduled within **31 months** from the priority date or the international filing date, whichever is earlier. The time-limit for PCT national phase application could be increased through National Laws by each member country of PCT.

With respect to the National Phase Application of patent, the title, description, abstract and claims as filed in the International Application under PCT shall be considered as the Complete Specification. Apart from this, the regulations applicable for filing and processing an ordinary patent application are also applied here.

International Patent Application:

For protecting an invention, patent protection is taken by people, multi-national companies, research institutions and universities. Since, patent protection is jurisdiction specific in nature, it only gives the protection for the country in which it is filed. An international patent application helps applicant to seek patent protection based on the priority date of initial application in other countries also. Therefore, there is a need of an international patent protection. There are widely two ways for seeking international patent protection and they are Convention Patent Application and PCT Application. It may usually be filed with the national patent office of the Contracting State of which the applicant of patent is a national or resident or, at the applicant's choice or decision, with the International Bureau of WIPO in Geneva.^{xxii}

PCT filing procedures in India:

India is a member country of the **Patent Cooperation Treaty (PCT)** which enables the Indian citizens to file patent applications in the member countries of the PCT as well as enables the foreign and Indian applicants to get patent protection in India by entering into the national phase PCT application India after filing their PCT Application at **WIPO**. In India, the timeline is **31 months**. Further, based on the international search report from the International Search Authority [ISA] or the written opinion, the applicant can evaluate with the reasonable patentability of the invention in the locations or countries where the patent is sought.

Chapter III of the **Patents Rules, 2003** deals with the international applications under the PCT- **Rule 18** deals with **appropriate office in relation to international application** which states that the receiving office, the designated office and the elected office, as the case may be, for the purposes of international applications of patent shall be the appropriate office referred to in rule 4 of patent rules, 2003.

Notwithstanding anything contained in sub-rule (1) of **Rule 18**, the Patent Office, Delhi branch shall be the appropriate office for dealing with the International Bureau and any other International Searching Authority and International Preliminary Examining Authority. An international application of patent must be filed with the appropriate office either in the language of English or in Hindi^{xxiii}

Rule 19A deals with **Indian international searching authority** which states that the Patent Office, Delhi branch shall perform the functions of the Indian International Searching Authority under the treaty in accordance with a legal agreement between the Indian Patent Office and the International Bureau.^{xxiv}

Rule 19B deals with **International Search Report** which states that the searching authority shall, on receipt of the search copy, shall notify the International Bureau and also the applicant about the receipt of search copy with identification mark 'ISA/IN' along with the international application of patent number and its serial number and the date of receipt of the search copy.^{xxv}

Rule 19C deals with the **time limit for establishing international search report** which states that The Searching Authority shall establish the International Search Report and written opinion within **3 months** from the date of receipt of the search copy by the searching authority, or within a period of **9 months** from the date of priority, whichever expires later.^{xxvi}

Rule 19E of the patents rules, 2003 deals with **confidential treatment** which states that all the matters pertaining to the international applications of patents shall be kept confidential in

accordance with the patent cooperation treaty and the regulations under the patent cooperation treaty.^{xxvii}

Rule 19F deals with **Indian International Preliminary Examining Authority** which states that The Patent Office, Delhi branch shall perform the functions of the International Preliminary Examining Authority under the patent cooperation treaty in accordance with a legal agreement between the Indian Patent Office and the office of International Bureau.^{xxviii}

Rule 19G deals with **period for making a demand** which states that the demand for international preliminary examination shall be made within the period specified in the Treaty or regulations under the Treaty.^{xxix}

Rule 19H deals with the **fees payable to the examining authority** which states that the fees payable to the examining authority shall, in addition to the fees specified in the regulations under the Patent Cooperation Treaty, be the fees specified in the Fifth Schedule.^{xxx}

Rule 19J of the patents rules, 2003 deals with the **processing of demands for international preliminary examination** which states that, the examining authority, on receipt of the demand for international preliminary examination of patent application, if the examining authority is competent to conduct an international preliminary examination of the patent application, shall assign the identification mark which is generally referred as 'IPEA/IN' and shall notify the applicant and the International Bureau.^{xxxi}

Rule 19K deals with **international preliminary examination report** which states that the examining authority shall refer the international application, in accordance with the provisions contained in the Treaty and the regulations under the patent cooperation treaty, in the order in which the demand was received in the examining authority to an examiner or any other officer who is appointed under **sub-section (2) of section 73** of the patent Act, 1970 for preparing an International Preliminary Examination Report ordinarily within a period of **3 months** but not exceeding **4 months** from the date of such reference.^{xxxii}

Rule 19L deals with **period for establishing international preliminary examination report and its transmission** which states that the period for establishing the International Preliminary Examination Report shall be twenty eight months from the priority date; or **6 months** from the period specified under **Rule 69.1** of the regulations under the Patent Cooperation Treaty for the start of the international preliminary examination; or **6 months** from the date of receipt by the Examining Authority of the translation furnished under **Rule 55.2** of the regulations under the Patent Cooperation Treaty, whichever expires last.^{xxxiii}

Rule 19M deals with the **transmittal of the International Preliminary Examination Report** which states that the examining authority shall transmit one copy of the International Preliminary examination report and other related documents, if any, to the office of the International Bureau, and one copy to the applicant, on the same day.^{xxxiv}

Rule 20 deals with the **International applications designating or designating and electing India** which states that an application corresponding to an international application filed under the Patent Cooperation Treaty which may be made under **Form 1** under sub-section (1A) of the **section 7**.^{xxxv}

The **Rule 20(4)** states that the time limit shall be **thirty one months** from the priority date

Rule 21 deals with the **filing of priority document** which states that where the applicant in respect of an international application designating India has not complied with the requirements of **rule 17.1** of the regulations of the PCT, the applicant shall file with the patent office the priority document referred to in that rule before the expiration of the time limit which is referred to in **sub-rule (4) of rule 20** of the patent rules, 2003.^{xxxvi}

Rule 22 of the **patent rules 2003** of India deals with the **effect of non-compliance with certain requirements** which states that an international application designating India shall be deemed to be withdrawn if the applicant of patent does not comply with the requirements which are mentioned under **Rule 20**.^{xxxvii}

PROCEDURE TO FILE PCT APPLICATION:

PCT being an international regime to protect inventions by granting patents, it has some basic rules and procedure of its own for doing so. Among them some are mandatory (such as filing of the application, international search, international publication and national phase) and some are optional (such as supplementary international search and international preliminary examination). When the applicant files the PCT application at the regional patent office or directly at international authority, the application is examined by the ISA (International Search Authority) whether its patentable or not and published in international journals so that whole world will know about the invention and oppositions can be filed from all over world.

Though the examination and publication all are done by international authority but the granting of patents remains under the control of the national or regional patent Offices in what is called the "national phase". So, the filing procedure is,

- **Filing:** Generally an international application of patent is filed in any national or regional patent Office or WIPO, complying with the PCT formality requirements, in

one language, and a set of fees. This has to be done within 12 months of filing the local application.

- **International Search:** The "International Searching Authority" of patent (ISA) identifies the published patent documents and technical literature ("prior art") This has to be published within 16 months from the filing the application at home country.
- **International Publication:** As soon as possible after the expiration of 18 months from the earliest filing date, the international application comes into public domain. This has to be published within 18 months from the filing the application at home country.
- **Supplementary International Search (optional):** The second International Searching Authority identifies the request of the applicant, the published documents which may not have been found by the first ISA which carried out the main search because of the diversity of prior art in different kinds of languages and different kinds of technical fields. This has to be published within 22 months from the filing the application at home country.
- **International Preliminary Examination (optional):** One of the International Searching Authority at the request of the applicant carries out an additional patentability analysis, usually on an amended or updated version of the applicant's application. This has to be published within 28 months from the filing the application at home country.
- **National Phase:** After the end of the PCT procedure, usually at 30 months from the earliest filing date of any initial application, from which the patent applicant can claim priority, the applicant of patent can pursue the grant of patents directly before the national (or regional) patent Offices of the countries in which you want to obtain them. The PCT national phase application of patent is a single time submission to apply for a patent through member states of the Patent Cooperation Treaty (PCT). This process provides for patent protection while following to each nation's individual requirements. It's backdated to the original date of filing.^{xxxviii}

CONCLUSION:

The awareness of the patent rights for an invention must be made to all kinds of people across India. Inventors make lots of efforts to create an original work of their own invention. It sometimes involves investment of huge money. Since it is unfair to steal the work of other person for the purpose of monetary gain or profit, the provisions of Patents Act, 1970 are there to protect the original patented invention from the duplication by the other people. Even though the filing procedure for patents in India is quite long in nature, India is one of the signatory members of the Patent Cooperation Treaty and Indian patent law has an international recognition to file the international applications of patents.

Today the well-developed patent law of India is one of the reasons for the growth of industrialization and globalization of India. The patent laws of India even develops the GDP of India by allowing the multi-national companies to establish their domain market in India for the purpose of manufacturing and selling their patented inventions or products in India and this enables the Indian citizens to get more job opportunities. The Indian patent Act, 1970 is not just a law it is a tool for the enhancement of livelihood of the Indian citizens.

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