

Understanding Sections 7, 9–11B: Ordinary, Convention, and PCT Applications under the Indian Patent Act

Section 7: Application for Patents (Ordinary Application)

Section 7 forms the foundation of the patent application process in India. It states that every patent application must be made in the **prescribed form and manner** and filed with the **Patent Office** having jurisdiction.



Key Features of Section 7

1. Who can apply:

- The application can be made by the *true and first inventor*, or
- By an assignee, or
- By the legal representative of a deceased inventor.

2. Forms required:

The main form used is **Form 1**, accompanied by a **provisional or complete specification** (as per Section 9).

3. Types of applications under Section 7:

- **Ordinary application:** Filed in India directly without claiming any priority from an earlier application in another country.
- The date of filing in India becomes the **priority date** for the invention.

Note: While ordinary and convention applications fall under Section 7(1), PCT applications enter the Indian system via Section 7(1A) and Rule 20 of the Patent Rules.

4. Provisional and complete specification:

The application must contain a specification that either fully describes the invention (complete) or gives an outline (provisional) to secure an early filing date.

Practical Example:

Suppose an inventor in Pune develops a new type of eco-friendly plastic. He files an **ordinary application** at the Mumbai Patent Office with a complete specification. This filing date becomes the **priority date**, and the patent process formally begins from this point.

Section 9: Provisional and Complete Specifications

This section deals with the content and timing of specifications submitted along with the patent application.

1. Provisional Specification (Section 9(1)):

- Filed when the invention is not yet finalized but the applicant wants to secure an early **priority date**.
- It should describe the nature of the invention and its potential scope.
- It gives the inventor **12 months** to complete the invention and file the **complete specification**.

2. Complete Specification (Section 9(3)):

- Must be filed **within 12 months** from the date of the provisional specification.

- It should contain the full and particular description of the invention, its working, and the best method of performing it.

If the complete specification is not filed within this time, the application is deemed **abandoned**.

Form 2 is used to submit either a provisional or complete specification, depending on the stage of filing.

Importance:

The provisional application acts as a protective measure to lock the filing date, while the complete specification demonstrates the inventor's claim and fulfills the legal requirement for examination.

Section 10: Contents of Specification

The **specification** is the heart of the patent document. Section 10 lays down the essential components that every specification must include.

Key Contents:

1. **Title and field of invention**
2. **Background and prior art**
3. **Detailed description and examples**
4. **Claims defining the scope of protection**
5. **Abstract (summary of invention)**

Drawings and Illustrations:

Where necessary, drawings must be attached to explain the working of the invention.

The **claims** are the most crucial part as they define the legal protection sought. *Anything not claimed, cannot be protected later*. Therefore, drafting precise and well-supported claims is critical. Claims must be clear, concise, and supported by the description.

Section 11: Priority Dates of Claims

Section 11 determines the **priority date** - a crucial concept in patent law. It decides who gets the patent when two inventors claim the same invention.

Key Principles:

- For an **ordinary application**, the date of filing in India is the priority date.
- For a **convention application**, the date of the first filing in a convention country is the priority date.
- Priority applies to each claim individually, depending on when it was first disclosed.

Section 11A: Publication of Applications

Under this section, every patent application is **automatically published** after **18 months** from the date of filing or the priority date, whichever is earlier.

However, applicants can also **request early publication** under Rule 24A of the Patent Rules.

Once published, the invention becomes open for public inspection, and the applicant gains certain **provisional rights** against potential infringers.

Section 11B: Request for Examination (RFE)

Publication alone does not initiate examination. The applicant must **formally request examination** within a prescribed period.

Key Provisions:

- The **Request for Examination (RFE)** must be filed within **48 months** from the date of priority or filing, whichever is earlier. This timeline is governed by Rule 24B of the Patent Rules, 2003.
- If the applicant fails to file within this period, the application is treated as **withdrawn**.
- Upon receiving the request, the **Controller** allots the case to an examiner for scrutiny under Section 12.

This ensures that only serious applicants pursue the patent to grant, reducing the burden on the Patent Office.

Convention and PCT Applications (Sections 7, 11 & Related Provisions)

Apart from ordinary applications, India also allows applications claiming priority from foreign filings.

1. Convention Application:

- Filed under **Section 135**, read with **Section 7(1)(b)** and **Section 11(2)**.
- The applicant must have filed a similar application in a **convention country** and must file in India **within 12 months** from that first filing.
- The earlier foreign filing date becomes the **priority date**.

Section 135 governs the filing procedure, while Section 11(2) determines the priority date based on the first foreign filing.

2. PCT (Patent Cooperation Treaty) Application:

- Allows applicants to file a **single international application** that can later enter multiple countries (including India).
- When India is a designated country, the applicant must **enter the national phase** in India within **31 months** from the international filing or priority date.
- This is governed by **Section 7(1A)** and **Rule 20 of the Indian Patent Rules**.

Both convention and PCT systems simplify global patent protection, saving time and effort for inventors seeking international coverage. India's participation in the PCT allows inventors to streamline international filings. However, national phase entry must comply with Indian timelines and formalities.

Quick Reference Table: Patent Application Types

Type	Relevant Sections	Priority Date	Key Timeline
Ordinary	7, 9, 10, 11	Date of Indian filing	48 months for RFE
Convention	7(1)(b), 11(2), 135	Date of first foreign filing	12 months to file in India
PCT (National Phase)	7(1A), Rule 20	International filing or priority date	31 months to enter India

Conclusion

Sections 7, 9–11B of the Patents Act form the procedural backbone of the patent system in India. They ensure that inventors- whether domestic or foreign - can protect their innovations effectively while maintaining procedural uniformity and fairness. Understanding these sections helps inventors choose the right type of application (ordinary, convention, or PCT) and follow the correct timelines for publication, examination, and grant. As global innovation accelerates, understanding these pathways helps inventors navigate both domestic and international protection strategies.

In today's competitive innovation environment, timely filing and compliance with these procedural requirements can make the difference between securing a valuable patent and losing it to procedural default.

References

1. The Patents Act, 1970 (as amended up to 2021)
2. The Patents Rules, 2003
3. Controller General of Patents, Designs and Trade Marks (CGPDTM) — Official Manual of Patent Office Practice and Procedure (2020)
4. WIPO: *Patent Cooperation Treaty (PCT) Overview*
5. *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, AIR 1982 SC 1444

#IndianPatentLaw #PatentApplicationProcess #OrdinaryApplication #ConventionApplication
#PCTApplication #Section7 #Section9 #Section10 #Section11B #PatentAct1970
#IntellectualPropertyRights #IPLawIndia

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