

HOW TO FILE A PATENT IN INDIA: KEY REQUIREMENTS, DOCUMENTS & DEADLINES

In the world of intellectual property, timing is *everything*. A single day's delay can determine whether an inventor gets exclusive rights to their innovation or loses it to another applicant. This is why understanding **priority dates**, **forms**, and **filing requirements** is a critical part of the **patent application process** in India. These concepts not only define the scope and validity of a patent but also determine its enforceability under the **Patents Act, 1970**.

The infographic is titled "Priority Dates, Forms & Filing Requirements in the Patent Application Process". It is divided into several sections:

- What is a Priority Date?**
 - The date that establishes the precedence of an invention.
 - E.g., 1st Jan 2025 (Provisional)
 - 1st Mar 2024 (Convention)
- Important Forms**
 - Form 1 Application
 - Form 2 Specification
 - Form 18 Request for Examination
 - Form 3 Foreign Filing Statement
- Key Filing Requirements**
 - Complete/Provisional Specification
 - Drawings & Abstract
 - Priority Documents
 - Filing Fees & Forms
- Claiming Priority**
 - Provisional to Complete: Within 12 months
 - Convention Application: Within 12 months
 - PCT National Phase: Within 31 months
- Don't Miss the Deadlines!**
 - File Complete Spec. in 12 Months
 - Disclose Foreign Filings in Form 3
 - Submit Priority Documents on Time!

At the bottom, there are social media handles: #PatentLaw | #PriorityDate | #PatentFiling | #InnovationLaw.

◇ What is a Priority Date?

The **priority date** is the date that establishes the precedence of an invention over others. In simple words, it is the **date from which the novelty and inventive step of an invention are judged**. If two inventors file for similar inventions, the one with the earlier priority date will

be entitled to the patent. Under Section 9(2), if multiple provisional applications are filed for related inventions, the Controller may allow a single complete specification to consolidate them, each retaining its own priority date.

Under **Section 11 of the Patents Act, 1970**, the priority date is the **date of filing of the first application** for a particular invention. For Indian patent law purposes, the priority date can arise from:

1. A **provisional specification** (if followed by a complete specification within 12 months).
2. A **complete specification** (if directly filed).
3. A **foreign application** (if filed under the **Paris Convention** or **Patent Cooperation Treaty (PCT)**).

Example:

If an inventor files a **provisional application on 1st January 2025** and a **complete specification on 1st January 2026**, the priority date remains **1st January 2025**.

If the same invention was earlier filed in the USA on **1st March 2024**, and the Indian application is filed within 12 months (by **1st March 2025**), the priority date in India will be **1st March 2024** - thanks to the **convention application system**.

◇ Importance of the Priority Date

1. **Determines novelty:** The invention is examined based on prior art available **before** the priority date.
2. **Resolves conflicts:** When similar inventions are filed, the earlier priority date usually prevails.
3. **Affects patent term:** Though the term of a patent (20 years) starts from the **filing date of the complete specification**, the **priority date** affects the **examination of novelty and inventive step**.

The priority date also determines the cut-off for pre-grant opposition and affects which prior art references are considered during examination.

◇ Filing Requirements Under the Indian Patent System

Filing a patent application in India must comply with the **Patents Act, 1970** and the **Patent Rules, 2003**. The process can be initiated with a **provisional** or a **complete specification**, depending on the stage of development of the invention.

1. Who can file?

As per **Section 6**, the following persons can apply:

- The **true and first inventor**, or
- The **assignee** of the inventor, or
- The **legal representative** of a deceased person entitled to apply.

◇ Essential Patent Forms and Their Purposes

Every step in the patent process requires the filing of specific forms prescribed under the **Patent Rules, 2003**. Below is a summary of the most commonly used forms:

Form No.	Purpose	Relevant Rule
Form 1	Application for Grant of Patent	Rule 20
Form 2	Provisional or Complete Specification	Rule 13
Form 3	Statement and Undertaking regarding Foreign Applications	Rule 12
Form 5	Declaration as to Inventorship	Rule 13(6)
Form 9	Request for Early Publication	Rule 24A
Form 18	Request for Examination	Rule 24B
Form 18A	Request for Expedited Examination	Rule 24C
Form 26	Authorization of Patent Agent	Rule 135
Form 28	For claiming small entity/start-up status	Rule 7(3A)

Other relevant forms include Form 4 (Request for Extension of Time) and Form 6 (Request for Amendment), which support procedural flexibility during prosecution.

Each form must be filed correctly with the prescribed **fee**, either physically at one of the **Patent Offices (Delhi, Mumbai, Chennai, or Kolkata)** or **electronically through the IP India portal**.

◇ Key Filing Requirements

1. Documents to be Submitted:

- Application in **Form 1**
- **Specification (Form 2)** – either provisional or complete
- **Drawings** (if applicable)
- **Abstract** summarizing the invention
- **Proof of right** to apply (if applicant is not the inventor)
- **Power of attorney (Form 26)**, if filed through a patent agent
- **Priority document**, if claiming foreign priority

2. Language:

Applications must be filed in **English or Hindi**.

3. Fees:

The filing fee depends on the applicant's category - **natural person/start-up, small entity, or large entity**.

4. Electronic

Filing:

The Indian Patent Office encourages **e-filing**, which allows for faster submission and reduced fees compared to physical filing.

◇ Claiming Priority in Different Scenarios

1. Provisional to Complete Specification

If a provisional application is filed first, the **complete specification must be filed within 12 months** (Section 9). Failure to do so leads to the application being deemed abandoned.

2. Convention Application (Section 135)

An applicant who has filed an application in a **convention country** can claim priority in India **within 12 months** of the first filing date abroad.

3. PCT National Phase Application

If an international application is filed under the **Patent Cooperation Treaty (PCT)**, the applicant can enter the **national phase in India within 31 months** from the **priority date**.

- The PCT application must designate India as one of the countries where protection is sought.
- The national phase entry must include a complete specification, Form 1, Form 2, and other required documents.
- The process is governed by **Section 7(1A)** of the *Patents Act, 1970* and **Rule 20** of the *Patent Rules, 2003*.

4. Divisional and Patent of Addition

- A **divisional application** (Section 16) retains the **priority date** of the parent application.
- A **patent of addition** (Section 54) takes the **same priority date** as the main patent.

◇ Common Mistakes to Avoid

- Missing the **12-month deadline** to file a complete specification.
- Failing to **disclose foreign applications** in **Form 3**.
- Neglecting to **file the priority document** within the prescribed time.
- Not paying **requisite fees** or submitting **incorrect forms**.
- Overlooking Form 5 (Declaration of Inventorship), which is mandatory and must be filed with the complete specification.

Strategic use of priority claims - especially in fast-moving sectors like AI, biotech, and electronics - can offer inventors a competitive edge in securing rights.

◇ Conclusion

Understanding **priority dates**, **forms**, and **filing requirements** is crucial for protecting an invention effectively. The Indian patent system is designed to reward innovation while ensuring transparency and procedural discipline. For inventors, startups, and research institutions, accuracy in documentation and awareness of filing timelines can make the difference between owning a valuable patent and losing it to procedural lapses.

Thus, before filing, applicants should carefully prepare all necessary documents, consult a **registered patent agent**, and ensure compliance with the **Patents Act, 1970** and **Patent Rules, 2003**.

References

1. The Patents Act, 1970 (as amended).
 2. The Patent Rules, 2003.
 3. Controller General of Patents, Designs & Trade Marks (CGPDTM) – <https://ipindia.gov.in>
 4. WIPO: Guide to the Patent Cooperation Treaty (PCT).
 5. *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, AIR 1982 SC 1444.
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