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# HOW PATENT EXAMINATION WORKS IN INDIA: SECTIONS 12–20 ON FER, HEARINGS & AMENDMENTS

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## Introduction

Once a patent application is published and a request for examination is filed, the process enters a critical phase - **Examination**. This stage ensures that only those inventions which meet the legal and technical requirements are granted patent rights. Sections **12 to 20** of the **Indian Patent Act, 1970** outline the procedure of examination, the role and powers of the Controller, and the rights of the applicant to respond, amend, or be heard.



In simple terms, this phase acts as a *quality check* where the Patent Office ensures that the invention is truly new, useful, and patentable under the law.

## Section 12: Examination of Application

Under **Section 12**, once a **request for examination (RFE)** is made (as per Section 11B), the Controller refers the application and its related documents to an **Examiner of Patents**.

The examiner conducts a detailed investigation to check:

1. Whether the application and specifications comply with the requirements of the Act and Rules.
2. Whether there is any lawful ground for objection.
3. Whether any other patent has already been granted for the same invention.
4. Whether the claimed invention is patentable under **Sections 3 and 4** (non-patentable subject matter).

The examiner must submit a report to the Controller within the **prescribed period** as per the **Patent Rules, 2003**.

The **First Examination Report (FER)** is one of the most crucial documents in the patent process - an applicant must respond to it within **six months**, or the application is **deemed abandoned** under Rule 24B of the Patents Rules, 2003!

## Section 13: Search for Anticipation

The examiner performs a **“prior art search”** under this section. It involves checking whether the claimed invention has been **anticipated** (i.e., already known or used) in:

- Any prior Indian patent or published specification.
- Any other publication worldwide before the date of filing.

This ensures that no duplicate or previously known invention gets patent protection. The report is not conclusive but guides the Controller in the examination process.

## Section 14: Consideration of the Report by the Controller

Once the examiner's report is ready, the Controller reviews it and, if necessary, **communicates the objections** to the applicant. The applicant is given an opportunity to **amend** or **clarify** the application within a prescribed period.


This communication forms the basis of what is commonly known as the **First Examination Report (FER)**.

## Section 15: Power of Controller to Refuse or Require Amendment

After considering the applicant's response to the FER, if the Controller finds that the application still does not comply with the Act, they can:

- **Refuse** the application, or
- **Require amendments** to make it acceptable.

The Controller's decision is guided by fairness - giving the applicant a reasonable chance to meet the objections before rejection.

 **Case Law:** In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* (1979), the Supreme Court emphasized that patent grant requires **novelty**, **inventive step**, and **industrial applicability** - principles that guide the Controller's decisions under Sections 15–18.

## Section 16: Power to Make Amendment to the Application

Sometimes, during examination, it is found that a single patent application contains *more* than one invention. In such cases, under **Section 16**, the applicant may be asked to **divide** the application into two or more applications - known as **divisional applications**.

Each divisional application retains the **same priority date** as the parent application, provided it does not introduce new subject matter.

## Section 17: Power of Controller to Make Orders Respecting Dating of Application

Under **Section 17**, the Controller can change the **date of filing** of the application if any missing documents (like provisional or complete specification) are filed later than required.

However, such change affects the **priority date**, which may influence the novelty assessment of the invention.

## Section 18: Powers of Controller in Cases of Anticipation

If the Controller finds that the invention has been anticipated by a prior publication or patent, he can refuse the patent unless the applicant shows that:

- The earlier publication is not relevant, or
- The invention is distinguishable due to specific technical advancement.

The applicant may also be given an opportunity to amend claims to overcome such objections.

## Section 19: Powers of Controller in Case of Potential Infringement

Section 19 empowers the Controller to ensure that a newly granted patent does not **infringe existing patents**. If the invention appears to overlap with another granted patent, the Controller can require amendments or limit the scope of claims to prevent potential infringement.

## Section 20: Power of Controller to Correct Clerical Errors

Even minor errors in patent documents - such as typographical mistakes, wrong numbering, or clerical omissions - can be corrected by the Controller under **Section 20**. This helps maintain procedural clarity without affecting the substance of the invention.

## Examination Process in Practice

Here's a stepwise summary of how the Controller and applicant interact under these sections:

1. **Request for Examination (RFE)** is filed.
2. **Examiner's report** (Section 12–13) is generated and submitted to Controller.
3. **Controller issues FER** (Section 14) containing objections.

4. **Applicant replies or amends** application within **6 months** (extendable by 3 months).
5. **Controller reviews amendments** (Section 15–18).
6. **Hearing may be offered** before final refusal or acceptance.
7. **Patent is granted or refused** depending on compliance.

This sequence ensures a transparent and fair evaluation process, balancing the applicant's rights with public interest.

## Role of Hearing and Amendments

The **hearing process** is vital. Before rejecting an application, the Controller must give the applicant a fair chance to be heard - either in person or through written submissions. Amendments can be made to claims, description, or drawings, provided they do not **introduce new matter** or alter the original disclosure.

Section	Topic	Key Action	Applicant's Rights
12	Examination	Referral to Examiner	None directly
13	Anticipation Search	Prior art check	None directly
14	FER	Objections communicated	Right to respond
15	Refusal/Amendment	Controller decision	Right to amend
16	Divisional Application	Split inventions	Retain priority date
17	Dating of Application	Adjust filing date	May affect novelty
18	Anticipation	Refusal unless distinguished	Right to amend
19	Infringement Risk	Claim adjustment	Right to amend
20	Clerical Errors	Correction allowed	Procedural relief

## Conclusion

Sections **12 to 20** of the Indian Patent Act form the **core of the patent examination framework**. They provide a balance between the Controller's supervisory authority and the

inventor's right to fair consideration.

By following this structured procedure, the Indian Patent Office ensures that only genuine innovations, compliant with legal standards, are rewarded with exclusive patent rights - protecting both innovation and public interest.

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## References

1. The Patents Act, 1970 (as amended up to 2021).
  2. The Patents Rules, 2003.
  3. Manual of Patent Office Practice and Procedure, 2019 (Controller General of Patents, Designs & Trademarks).
  4. Intellectual Property India, <https://ipindia.gov.in>
  5. *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* (1979 AIR 1440).
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#IndianPatentAct #PatentExamination #FER #ControllerPowers #PatentAmendments  
#PatentLawIndia #IntellectualProperty #PatentProcedure #InnovationLaw  
#SearchForAnticipation #PriorArtSearch

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