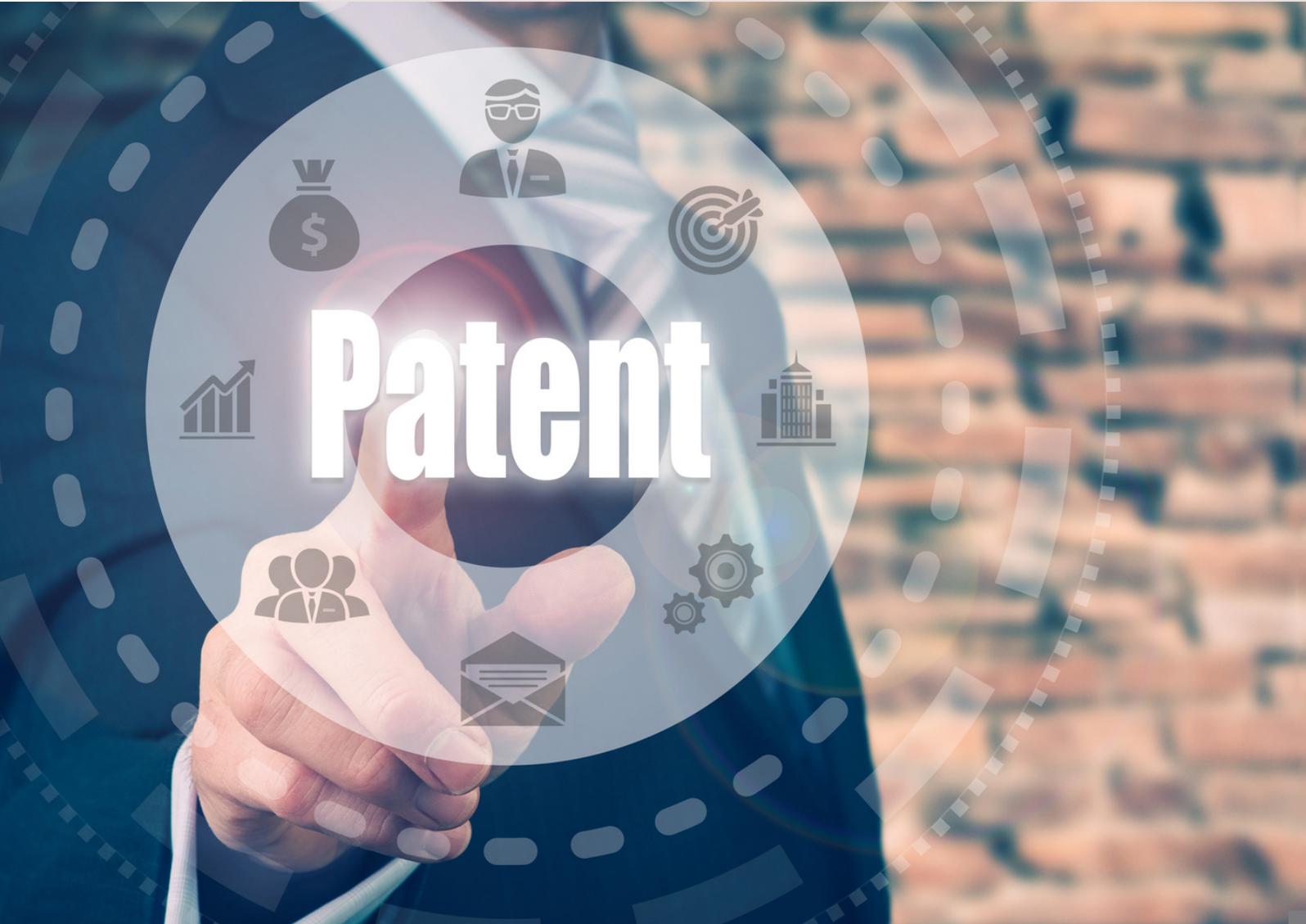


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## PATENT APPLICANTS IN INDIA

Most of the times when it comes to filing of patent application, the very first question which might arise in the mind of a person while filing the patent application is “What should be the entity type I could probably opt to and whether there are any benefits of it?” An application for the patent can be filed either by (i) by any person who is claiming to be the true & first inventor of the invention or (ii) by the assignee of such person who is claiming to be true & first inventor or (iii) by the deceased person’s legal representative who was entitled to make such an application before the death of deceased person.

The application for a patent can either be filed alone by a person entitled to apply for patents or they could file it jointly with any other person.

In India there are multiple categories of applicants as follows:

- 1) Individuals (natural person(s))
- 2) Startup
- 3) Small entity
- 4) Female Applicant(s)
- 5) Educational Institutions
- 6) Large Entities (Companies)

**Natural Person:** This simply means an individual person who could be an applicant or an inventor and is entitled to get the benefits under Indian Patent Act, 1970 under the name of the individual person. The patent application can be filed in the name of one or multiple individual(s). Also, in case of a natural person the inventor & the owner is the same person and he/she may choose to sell the rights of patent, transfer it, license it or commercialize it whenever he/she wants.

Startup: As per Indian Patent Act, 1970 rule 2(fb) defines startup as an entity in India which is recognised by the competent authority as a startup under the Startup India initiative. Whereas the foreign entity is an entity that fulfils the criteria for the turnover and period of getting incorporated or registered as per the Start India initiative and a self-declaration is required by the applicant for stating itself as a start-up. Also, while calculation of the turnover the reference rates of the foreign currency of Reserve Bank of India shall be executed.

Further, a startup means an entity where more than five years have not lapsed from the date of getting incorporated or registered. In other words, if an entity has completed its five years from the date when it was incorporated or registered or if the overall turnover exceeds rupees 25 Crores for any of the aforementioned year, then that entity shall cease to be a startup. Also, the term “turnover” should have the same meaning as defined in the Companies Act 2013. However, if the entity is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property, it will be considered as a startup, if it aims to develop and commercialise a new product or service or process, or a significantly improved product existing in nature or service or process which will somehow create or add value for customers or workflow. Also, such an entity formed by splitting up or reconstruction of a business which is already existent shall not be considered as a startup. Additionally, if an entity falls under the criteria of startup they would have the benefit in filing cost of patent application and could enjoy the benefits of expedited examination if required.

Documents to be submitted for claiming the status of startup:

- For an Indian applicant: Any document as evidence of eligibility, as defined in rule 2(fb).
- In case of a foreign entity: Any other document showing the eligibility.

**Small Entity:** As per Indian Patent Act, 1970 rule 2(fa) defines small entity as an entity in India which in case of an enterprise engaged in the manufacturing or producing goods, an enterprise that does not exceed the limit specified for a medium enterprise under section 7 sub-section (1) of clause (a) of the Micro, Small and Medium Enterprise Development Act, 2006 where the investment is made in plant and machinery where an enterprise is an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in manufacturing and producing the goods, in any manner, be connected with to any industry specified in First Schedule to Industries (Development and Regulation) Act, 1951 or engaged in providing and rendering the service or services in such an industry. Additionally, if an entity falls under the criteria of small entity, then they have the benefit of reduced filing cost of patent application in India and could enjoy the benefits of expedited examination if required.

Documents to be submitted for claiming the status of small entity:

- For an Indian applicant: Evidence of registration under the Micro, Small and Medium Enterprises Development Act, 2006(27 of 2006)
- In case of a foreign entity: Any other document such as annual reports or accountants' certificates showing that the investment in plant and machinery or equipment by the entity does not exceed Indian Rupees 50 crore and turnover does not exceed Indian Rupees 250 crore.

**Female Applicant:** As per Indian Patent Act, 1970 rule 24 sub-rule (1) clause C sub-clause (d) adds one new categories of applicants namely female patent applicants or groups where at least one of the applicants is a female who may avail expedited examination. As it particularly focuses on specific instances where applicants may seek expedited examination by the Indian Patent Office. This simply means that if the Applicant or joint applicants or all applicants whether Indian or foreign are natural persons, and at least one of the applicant among them is a female, then the applicants can expedite the examination of the filed Indian patent application by submitting an identity card of female applicant issued by competent authority as evidence of eligibility which might be any of the government issued ID which proves/shows the gender of the applicant along with their photo and other necessary applicant details.

**Educational Institution:** An educational institution clearly meant a university which is established or incorporated by or under Central Act, a Provincial Act, or a State Act, which includes any supplemental educational institution which is recognised by an authority that is designated by the Central Government either the State Government or the Union territories in this regard. Also, educational institutions get much awaited boost for patenting new ideas to reality due overall 80% reduction in fees and paying an equivalent amount to small entities, startup and natural person(s).

Documents to be submitted for claiming the status of educational Institution:

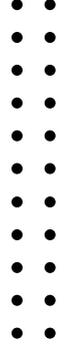
- For an Indian applicant: Any document as evidence of eligibility, as defined in rule 2(ca).
- In case of a foreign educational institution: Any other document showing the evidence of eligibility.

**Large Entity (Companies):** Entity which is large in size or production of goods is very high as in comparison to other applicants as well as the turnover is also much more than the other entities is a large entity. Applicants can file a PCT application and choose India as an International Search Authority (ISA) or International Preliminary Examination Authority (IPEA). This move makes the applicant eligible to opt for the expedited route.

## References:

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intladvocare

Delhi NCR | Mumbai

Reach us at: [inttl@intladvocare.com](mailto:inttl@intladvocare.com)

