

# BASICS OF PATENTS & TRADEMARKS IN INDIA

create | manage | monetize  
**Intellectual Property**  
**AnovIP**  
attorneys | agents | associates

A REFERENCE GUIDE  
FOR INDIAN  
STARTUPS

# INTRODUCTION

In today's highly competitive business landscape, intellectual property (IP) protection is crucial for startups to safeguard their innovations, brand identity, and market position. In India, the legal frameworks governing patents and trademarks play a significant role in providing exclusive rights to inventors and business owners.

This report serves as a comprehensive reference guide for Indian startups, providing an overview of the basics of patents and trademarks, their importance, and the process of acquiring protection.

## THE BASICS & STARTUPS

For Indian startups, understanding the basics of patents and trademarks is essential for protecting their innovations, inventions, and brand identity. Patents provide exclusive rights to inventions, fostering innovation and market competitiveness. Trademarks, on the other hand, differentiate a startup's products or services, building brand recognition and customer trust.

By navigating the patent and trademark application processes effectively, startups can secure legal protection, attract investors, and create a solid foundation for growth and success in the dynamic Indian business environment.

# PATENTS

*A patent is a legal right granted to an inventor or assignee for a new and inventive product, process, or technology. Patents provide exclusive rights, allowing the owner to prevent others from making, using, selling, or importing the patented invention without their consent for a limited period, 20 years from the date of filing.*

## IMPORTANCE OF PATENTS

### PATENTS OFFER SEVERAL BENEFITS FOR INDIAN STARTUPS

#### **Competitive Advantage**

*Patents provide a competitive edge by granting exclusive rights, enabling startups to commercialize their inventions without fear of imitation.*

#### **Market Monopoly**

*Patents allow startups to establish a monopoly in the market, preventing competitors from exploiting their innovations and potentially attracting investors.*

#### **Licensing and Revenue Generation**

*Patents can be licensed or sold, providing startups with additional revenue streams and opportunities for collaboration.*

#### **Strategic Asset**

*Patents act as strategic assets, enhancing a startup's valuation and attracting potential investors or partners.*

# Patentability Criteria (India)

To obtain a patent in India, an invention must meet the following criteria:



**01**

## **Novelty**

An invention is considered novel if it is new and not publicly disclosed before the date of filing the patent application. It should not have been published, used, or known to the public in any form or in any country. Conducting a thorough prior art search is important to establish the novelty of the invention.



**02**

## **Inventive Step**

The invention must involve an inventive step, meaning it should not be obvious to a person skilled in the relevant field. It should demonstrate a non-obvious advancement over existing knowledge or technology. The invention should possess a level of creativity and innovation that sets it apart from what is already known.



**03**

## **Industrial Applicability**

The invention must be industrially applicable, meaning it should have practical utility and be capable of being made or used in any industry. It should not be purely theoretical or abstract but should have a practical and tangible aspect.



**04**

## **Not Patentable**

Non-patentable subject matter include inventions contrary to public order, morality, health, scientific principles, methods of agriculture or horticulture, and mere discoveries of natural substances.

# Patent Application Process

---

The patent process in India involves several stages and procedures to obtain legal protection for inventions. Here is a brief overview of the patent process in India:

## 01 — Prior Art Search

Before filing a patent application, it is advisable to conduct a prior art search to determine the novelty and non-obviousness of the invention. This search helps identify any existing similar inventions or published materials that may affect the patentability of the invention.

## 02 — Drafting the Patent Specification

The patent specification includes a detailed description of the invention, claims that define the scope of protection, and any relevant drawings or diagrams. It is crucial to draft the specification accurately, clearly, and comprehensively to ensure proper protection of the invention.

## 03 — Filing the Application

The patent application can be filed online or offline with the Indian Patent Office (IPO). The application should include the complete specification, an abstract summarizing the invention, and the necessary forms and fees. The IPO provides different categories of applications, such as provisional and non-provisional applications, depending on the stage of development of the invention.

## 04 — Examination

After filing, the patent application goes through the examination process conducted by the IPO. The examination determines the patentability of the invention by assessing its compliance with the patentability criteria, including novelty, inventive step, and industrial applicability. It is important to respond promptly and effectively to any objections raised by the examiner during this stage.

## 05 — Publication

Once the application is found to be in order, it is published in the official patent journal after 18 months from the date of filing or priority date (if claimed). The publication makes the invention's details available to the public.

## 06 — Opposition Proceedings

After publication, interested parties have a specific period to file oppositions against the grant of the patent. The opposition proceedings provide an opportunity for third parties to challenge the patent's validity, novelty, or inventiveness. If an opposition is filed, the IPO conducts hearings and examines the evidence presented by both the patent applicant and the opponent.

## 07 — Grant of Patent

If the application successfully clears the examination stage and no opposition is filed or successfully defended, the IPO grants the patent. The patent owner receives a grant letter and the patent certificate, officially recognizing their exclusive rights to the invention for a period of 20 years from the date of filing.

# QUICK NOTE !

create | manage | monetize  
**AnovIP**  
Intellectual Property  
attorneys | agents | associates

It is important for inventors and startups to understand the patent process in India, seek professional guidance if needed, and ensure compliance with all the requirements and timelines to secure robust patent protection for their inventions.

# TRADEMARKS

*A trademark is a recognizable sign, symbol, or expression that distinguishes products or services of one entity from others. Trademarks play a crucial role in building brand recognition, consumer trust, and market reputation*

## IMPORTANCE OF TRADEMARKS

### TRADEMARKS OFFER SEVERAL BENEFITS FOR INDIAN STARTUPS

#### ***Brand Identity***

*Trademarks establish a unique brand identity, helping startups differentiate their products or services from competitors.*

#### ***Consumer Trust and Loyalty***

*Trademarks build consumer trust, as customers associate the trademark with quality and reliability.*

#### ***Business Expansion***

*Trademarks enable startups to expand their product or service offerings under a recognized brand, reducing marketing costs.*

#### ***Legal Protection***

*Trademarks provide legal protection against unauthorized use or infringement, allowing startups to enforce their rights.*

# Trademark Criteria (India)

To obtain a trademark in India, an invention must meet the following criteria:



**01**

## **Distinctiveness**

The most important criterion for trademark-ability is that the mark should be distinctive. It should have the ability to distinguish the goods or services of one entity from those of others in the marketplace. The mark should not be generic, descriptive, or common for the relevant goods or services. It should possess inherent distinctiveness or have acquired distinctiveness through extensive use and recognition.



**02**

## **Non-Descriptiveness**

A mark that directly describes the goods, qualities, characteristics, or ingredients of the products or services it represents is considered non-distinctive and non-registrable. It should not be a common word or term used in everyday language for the goods or services.



**03**

## **Non-Deceptiveness**

A mark should not be deceptive or likely to cause confusion or mislead the consumers about the nature, quality, or geographical origin of the goods or services. It should not create a false impression or falsely represent the source of the products or services.



**04**

## **Non-Offensiveness**

Marks that are scandalous, offensive, or against public order or morality are not eligible for trademark registration. They should not be contrary to the beliefs, sentiments, or cultural values of any community or section of society.



## 05

### **Non-Conflict**

The mark should not conflict with existing trademarks or prior pending applications. It should not cause confusion or deceive the public regarding the source or origin of the goods or services

## 06

### **Graphical Representation**

The mark should be capable of being represented graphically. It should be able to be reproduced in a clear and precise manner, such as through words, letters, numerals, logos, symbols, or a combination thereof.

## QUICK NOTE !

**AnovIP**  
create | manage | monetize  
Intellectual Property  
attorneys | agents | associates

Startups in India need to recognize the significance of trademarks in their journey towards success. Trademarks establish brand identity, prevent brand confusion, and provide legal protection. By understanding and leveraging the power of trademarks, startups can secure their intellectual assets, gain a competitive edge, and thrive in the challenging startup ecosystem of India.

# Trademark Application Process

---

The trademark process in India involves several stages and procedures to obtain legal protection for inventions. Here is a brief overview of the trademark registration process in India:

## 01 — Trademark Search

Before filing a trademark application, conducting a thorough trademark search is advisable. This search helps determine the availability and registrability of the proposed mark, ensuring it does not conflict with existing trademarks.

## 02 — Filing the Application

The trademark application can be filed online or offline with the Trademarks Registry. The application should include the applicant's details, a representation of the mark, a description of the goods or services, and the appropriate fees. It is recommended to engage a trademark attorney to ensure accurate and complete filing.

## 03 — Examination

After filing, the Trademarks Registry examines the application for compliance with formal requirements and substantive provisions. The examination includes an assessment of distinctiveness, descriptiveness, and potential conflicts with existing marks. The applicant may receive an examination report stating any objections or requirements.

## 04 — Response to Examination Report

If objections or requirements are raised in the examination report, the applicant must file a response within the prescribed period. The response should address the objections or fulfill the requirements to overcome the examination objections. It is crucial to provide strong arguments and evidence to support the registrability of the mark.

## 05 — Publication

If the application clears the examination stage or objections are successfully overcome, the mark is published in the Trademarks Journal. The publication allows interested parties to file oppositions against the registration within a specific period.

## 06 — Opposition Proceedings

During the opposition period, third parties can file oppositions if they believe the mark may cause confusion or conflict with their existing rights. Opposition proceedings involve hearings and submissions from both parties. If the opposition is unsuccessful or not filed, the application proceeds to registration.

## 07 — Registration

If no opposition is filed or successfully defended, the Trademarks Registry issues a registration certificate for the mark. The registration provides the owner with exclusive rights to use the mark in connection with the specified goods or services for a period of ten years, renewable indefinitely.

## 08 — Renewal

The registered trademark requires timely renewal to maintain protection. The renewal application can be filed within six months before the expiry of the registration period or during a grace period with an additional fee.

As young entrepreneurs embark on their business journeys, understanding the basics of patents and trademarks in India is vital.

Protecting intellectual property through patents and trademarks not only safeguards innovative ideas and brand identities but also plays a crucial role in establishing a competitive advantage in the marketplace.

By securing their intellectual assets, entrepreneurs can foster growth, attract investors, and build successful ventures in the dynamic Indian business landscape.

# Thank you!

Thank you for taking the time to read this report. If you have any questions or would like to discuss our findings further, please don't hesitate to reach out to us.



[info@anovip.com](mailto:info@anovip.com) | [hr@anovip.com](mailto:hr@anovip.com)



[www.anovip.com](http://www.anovip.com)