

**Comments
On
Draft Patent (Amendment) Rules,
2013**



Dated 19/06/2013

To ,
Secretary,
Ministry of Commerce and Industry
Government of India
Udyog Bhawan , New Delhi - 110011

Re: Comments on the proposed amendment of the Patent Rules 2003 (Fee Schedule) under sub- section (1) of section 159 of the Patent Act, 1970

Dear sir/madam,

With reference to the comments invited (by the notification dated May 06, 2013) on the proposed amendment of the Patent Rules 2003 (Fee Schedule).

The Patent Agent Association (“PAA”) is a Non-Governmental Organization (NGO# S/RS/SW/0347/2011) dedicated to protecting interest of registered Patent Agent in India, promoting and enhancing intellectual property rights in the Indian region.

Our Recent Activities:

- PAAi covered in Time of India, Delhi city, April 08, 2013
- PAAi as a media partner in MIP India IP & Innovation Forum 2013 (Le'Merdiem New Delhi)
- PAAI celebrated World IP Day 2012 in Mumbai at Aditya Birla Center for Arts, Chowpati. <https://www.facebook.com/events/374957959221297/>
- PAAi represented in a national conference at KIIT Bhubanewar in 2010
- Movement against APEDA tender

We, PAA, would like to furnish the concerns/objections/suggestions of our members in this regard. Please check the comments beginning on pagen # 4.

We request you to kindly consider the concerns/objections/suggestions in the interest of all stakeholder.

Thanking you.
Akhilesh Kumar Gupta (IN/PA-1303)
President, Patent Agents Association
Mobile-9650622383

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Comments Received from the Members

Ravi S (IN/PA - 853)

Well, reg. the fees structure proposed,

A) For Patent Filing, **I STRONGLY feel that there should be NO separate fee structure for E-filing and Physical filing.** Even as of today, many Patent Agents / Law firms consider PHYSICAL FILING as the safest mode of Patent filing. Because, that would ensure a '**RECEIVED SEAL**' in the duplicate of Covering letter, of Patent office with 'Chhapa' of the Concerned patent office.(Not only for Filing of Patent but also for subsequent actions such as Request for Examination, Publication etc, etc) **Also, many times the E-filing is not helpful for filing of Patents.** (**Not only due to server problems from IPO end, but also from the User side server, net connectivity etc**) More over, in our country, as OLD habits die hard, many are still adhering to Conventional filing of Patents and getting receipt from the Patent office (Accounts section, Front office)

So, I personally feel that Equality in Fees should be maintained (with no BIAS towards E-filing and conventional filing)

B) Also, reg. the Patent Agentship renewal, **I SUPPORT the hike from Rs. 500 to Rs. 1000.00** as it is very NOMINAL and justified, as it would bring the Agentship renewal for **Patent, Trademark & Geographical Indications AT PAR** with Rs.1000.00

I would like to submit the above views of mine. I would be happy if these are incorporated.

Thank you & warm regards,

Ravi S

Subhajit Saha (IN/PA 1937)
Counsellor-IPR & Registered Patent Agent

In response to the Draft Patent Amendment Rules(2013) ,notification I would like to put in the following submissions for consideration and comments:.

1. There is a need to have a three Tier fee structure in the Fee Schedule . 1. Natural Person 2. Micro /Small Entity 3. Large Entity . This will be of immense help for the MSME . MSME and large entities should not be put in the same platform in the fee structure. This will also help to capture information in FORM-1 for MSME filings (Small and Micro Entity) in the country for the Annual Report.
2. The 10% surcharge on Hard Copy needs to be discussed subject to the smooth functioning of the Online filing system. In case there is a lapse during the online filing of a patent application on the portal then such cases may be accommodated by Hard copy to get the Priority date without the surcharge.
3. Currently Bank a/c for e-filing is only with SBI and Axis Banks for the online transaction. To increase the ease for filers there needs to be a listing of few more banks where in all stakeholders can use this option with ease for on line transaction.
4. Lastly the Fees for Request for Examination-FORM 18 needs to be discussed for a revision revised as this might be on the higher side for MSMEs .

Current Fee Schedule for a Legal Entity Revised Schedule –Proposed as per the Notification for Legal Entity

Rs 4000/-	Rs 8000/-
Rs 10000/-	Rs 10000/-
Rs 10000/-	Rs 20000/-

Total: Rs 24000/- Total : Rs 38000/-

This means there is more than 50% hike in the official fees for only Filing a Patent Application, Express Publication and Filing Request for Examination. This might be a deterrent factor for MSMEs and Individuals to file more patents and needs to be discussed at length by all stakeholders and Department.

These are my individual submissions for the Department’s kind consideration.

Regards,
Subhajit Saha



Patent Agents Association

(a registered Non-Governmental Organization # S/RS/SW/0347/2011)

Pradeep (IN/PA - 865)
Registered Patent Agent

The draft changed to the rule must not be implemented. If implemented the changes shall only adversely affect Indian industry which has started to wake up to the patents only recently which is evident from the fact demonstrated by the statistics. Foreign applicants are less likely to fill the punch as considering they would continue to have foreign exchange rates in their favor. Small industry shall be at the receiving end.

If fee has to be increased for practical reasons, the increase must be differential in respect of foreign applicants and Indian Applicants special consideration may be given to small industries exactly the way US and other countries do.

Pradeep

Ajay Sahni (IN/PA - 144)

"The proposed increase in fees by the patent office is unwarranted and we object to this hike due to the following reasons:

1. There has been no significant increase in the number of applications filed in India for the last couple of years. Increasing the charges will result in even fewer applications per year. This will have a negative impact on the economy of India.
2. The patent office fees in India are already higher than many countries. Applicants entering the National phase in India via the PCT route will be discouraged due to the increase in charges. The proposed increase in the fees is higher than the official charges in China. China crossed the 1 million mark of number of patent applications per year in 2011. How will we compete with such figures if we increase the official fees by 100% which will then be higher than the fees of Chinese Patent Office.
3. It is now taking almost 5 - 6 months for the First examination Report to be issued. Since the number of Requests for Examination is higher than the number of Examination Reports issued each year, the back log of pending applications is thereby increasing every year.
4. The Patent Office does not allow amendment/deletion of even non-patentable claims during entry of national phase applications, by way of administrative order. Therefore the applicant have to pay fees for extra claims that have to be cancelled later on as they are non-patentable in India. Increasing the charges will be unfair and not appreciated by the foreign applicants.
5. Moreover, there is no information about sequence listing in the fee schedule. We suggest there should be a flat rate for all sequence listings.
6. There is a proposed increase in the fees for applications made physically at the Patent office, compared to those made online. Higher fees for physical filing cannot be acceptable. The server of the patent office is very slow during office hours, making e-filing a very cumbersome process. Uploading big files is very time consuming and usually the website page becomes inactive after a certain period and the whole process of uploading has to be started again. It is not possible to depend on e-filing for deadline cases.
7. The payment gateways for e-filing on the website are also very limited.
8. Only Patent Agents can register for e-filing and normal applicants will have to pay an extra fee. This by itself is an unfair.
9. The applicants with granted Patents, who pay annuity every year, will be discouraged to maintain their patent in India if the renewal fee is doubled.

Under the circumstances, the proposed increase in fees (100%) will discourage inventors and foreign applicants from filing applications in India. This will have an adverse effect on the economy and growth of India.

Best wishes,

Ajay Sahni



Jaya Bhatnagar (Ms) (IN/PA - 255)

Reg. Patent Agent

India, is one of the fastest growing economy in recent times. Intellectual Property Regime plays a key factor in the economical growth of the nation. Policy makers should consider this fact and hence avoid any detrimental steps that may be a hinderance in this aspect.

It is therefore necessary that applicants in **individual capacity** should be encouraged to protect their Intellectual assets more and more. The hike in the fee structure for individuals will definitely hamper their Intellectual growth.

- 1) THE HIKE IN THE FEE STRUCTURE FOR INDIVIDUALS SHOULD BE RESTRAINED.
- 2) THE HIKE IN THE FEE STRUCTURE WILL BE A BURDEN BOTH TO THE APPLICANTS AND LEGAL PRACTITIONER's and DEFINITELY AFFECT THE FILING IN INDIA. WE NEED TO UNDERSTAND THE GENUINE REASON FOR SUCH HIKE.
- 3) SUBJECT TO HIKE IN THE FEE STRUCTURE, PUBLIC AT LARGE SHOULD GET EFFICIENT and Quality SERVICES FROM THE APPROPRIATE OFFICES.
- 4) ALSO, THERE HAS TO BE AN ALTERNATE REMEDY. If the fee structure is hiked, a refund policy should be considered. In the event, applicant does not wish to proceed further. However, for refund policy, a strict timeline should be provided, beyond which refund will not be possible.

Thank you and warm regards

Jaya Bhatnagar (Ms)

Dr. Amarjyoti Basu (IN/PA-155)

First of all, I am prompted to ask for whose benefit the steep fee-hike is being proposed? Does the honourable policy-makers think that all patent applications originate in corporate houses or institutions wallowing in public money? The cost of filing patent application, prosecuting the same and particularly maintaining the issued patent has been raised to a level which will almost certainly discourage individual(s) applicant(s) and small entrepreneurs. Add to that Attorney's fees and the outcome will be for anybody to guess. The individual inventor-cum-applicants and/or small entities should be encouraged with offer of special incentive, but instead the present proposal seems to cast them aside.

Another feature strikes me. Do the honourable draftsmen believe that each applicant, particularly in mufassil towns, has access to internet to enable them to undertake 'e-filing', or else be penalised by being made to pay 10% more at every stage? This, in my opinion, is highly discriminatory and is bound to pose a burden on many of the poor applicants in urban or semi-urban areas.

It would have been much better if an incentive were offered on the fees payable, if done through e-filing mode, which would prompt them to get acclimated to the preferred mode.

I strongly recommend that escalation of charges should never exceed 25 - 30% of the existing fee structure, and certainly not the tune of 100%, as now proposed.

The proposals now offered by the Ministry will be more of a disincentive and dissuade people from seeking patent protection, defeating the aimed objective.

Yours truly,

Dr. Amarjyoti Basu.

Mr. MP Bhatnagar (IN/PA-168)

Subject: Objections regarding the enhancement of the official fee under sub-section 1 of the Section 153 of the Patent Act 1970 wherein the overall official fee structure has been arbitrarily multiplied by two without considering any pros & cons

The Official fee is always directly proportional to the services rendered by an Office/Organisation. However, in the last two years the services of the Patent Office have deteriorated to a great extent. The Patent Office right from its inception used to either grant or refuse the Patent on the very last date as specified under the Act. However, at present the last date is not carrying any meaning. The cases can await the grant even for two to three years after the last date. Thus giving more opportunity to the infringers to file pre-grant oppositions, thus delaying in grant of the Patent to the real inventor/applicant.

Even the cases are being examined at a very slow pace. It was announced by the Controller General in a seminar organized by Asian Patent Attorney Association(APAA) more than two years back, wherein five Hon'ble Justices of Hon'ble Supreme Court were present that the Patent Office has finished the examination of patent application filed in 2006 and even after two years of that statement of Controller General, the First Examination Report of all the patent applications filed in 2006 have not been issued.

According to the Patent Act the last date is very significant due to the insertions of pre-grant opposition. The delay in grant of the Patent in most of the cases is more than two years from the last date which can be detrimental to the patentee. Any unwanted delay in the grant of the Patent in some cases is more than two years from the last date can be detrimental to the patentee. It is a well established fact that, the cost is always directly proportional to the services rendered. With the present high official fee the services of the Patent Office have deteriorated as compared to the services offered with a mere fee of Rs. 30/- was charged.

It is an established fact that the cost of the official fee is enhanced based upon the different factors such as, cost of the services rendered and impact of the enhanced cost on the system. The Patent Office is supposed to grant Patent and develop an environment in the Country to have an innovative atmosphere and not to make money and work like a trading organisation. The basic principle of granting patents has not been considered at all.

It is surprising to note that somebody is filing the papers manually at the patent office he has to shell out 10% extra. It means that an individual having no internet facility and having registration with the Patent Office can not file the Patent Manually without paying 10% extra. If any individual inventor desires to file any Patent Application electronically he has to first purchase a digital signature, which costs more than the Patent Office fee itself and he has to maintain the signature till the validity period of the Patent to carryout different actions. Another aspect of the e-filing is that the applicant should have an account with the Axis Bank or State Bank of India with net banking facility. It is known fact that the private banks like Axis Bank open account for depositing at least a sum of Rs. 5000/- or Rs. 10000/- and sometimes has no branches in rural areas. So for an individual desirous to file the Patent Application has to waste Rs. 20000-25000/- to reach the stage of filing the

application. What about the money spent if the inventor is deprived of the grant of the patent within two to three years and not wait for seven to eight years. The technological life of the most of the indigenous inventions is hardly three to four years. Besides these in many parts of the country there is not enough internet facility. The Patent Office should connect and allow all the banks having net banking facility to accept the official fee. There is also no refund system in the Patent Office in case of extra fee paid by mistake for certain action.

Moreover, all the actions under different sections of the Patent act cannot be carried out electronically as the E-filing portal is still in development phase and not working smoothly to wipe out the physical mode of filing. The documents even which filed through e-filing mode could not be updated instantly in the Patent Office database. It always creates bugs during the filing and the user has to contact the IPO official to sort out the matter, which sometimes takes a day or two to sort out the problem. Sometimes the fees calculated by online system is not in conformity with the Patent Rules. There is no time bounds to file the application or any other action in online filing as such the Patent Applications can be filed on Saturdays and even on Sundays and after the closure of the Patent Office normal working days. This may cause havoc in smooth functioning of the Patent Office. There is no dedicated helpline which provide instant help in case any problem arises during the e-filing of the application. We have to keep in mind that in India first to file is the first applicant. A person having the electronic filing facility can file even on Saturday or Sunday but the counterpart having no e-filing facility can only file upto 4 PM on working days of the Patent Office.

It is high time that before considering enhancement of the official fee and the amount of enhancement, a committee should be formed to look into this matter keeping in view the services rendered by the Patent Office. The whole emphasis should be to grant a patent for what the invention timely, as the objects of the Patent Office is to grant monopoly to the inventors to make him disclose his invention to the public and to bring the invention in public domain after expiry of the monopoly period. Patent system was not created to make money at the cost of poor inventors and to curbe the innovative activity.

Is it going to give better services?

Is it going to make the examination more efficient?

Is it going to update the technical knowledge and expertise of the Examiners and Controller keeping pace with the fast developing technology?

Is it going to grant a legally valid patent and not only dependent upon the PCT search report ?

Are the Controllers/Examiners provided with latest technical journals and literatures not only to visit to understand it ?

Are the Controllers/ Examiners will be subjected to go through the fresher course?

What is the objective of this enhanced fee?

Why these rules are being amended when the Parliament is not in session?

Nothing has been made clear in the notification to enable to render the concrete view.

All the examination reports issued by the Patent Office are directly related to the PCT search report. No input , no extra efforts are carried by the Patent Office.

In the last and not at the least it is suggested, the matter should be referred to the committee consisting of economists, some representative of the affected organisations and a Parliamentarian before taking this drastic step to increase the official fee. The criteria that the official fee should be doubled implemented in 2003 carries no weightage. I would only submit, the criteria, the formula, the basics on which this enhanced fee has been proposed should be made available to the public at large, keeping in view the fact that the Patent System and grant of legally valid Patent is a backbone of development of the Country. The stronger and inventor friendly Patent System will boost not only the technological growth but also economical growth of the country.

Let there be any official fee but it should be directed in direct proportional to the work involved and in strengthening the patent system to give only better and timely service. Most of the indigenous technology developed are having the short life span. The enhancement of these fee will directly be a tool to give a boost only to multinational to have the monopoly rights and stop the growth of the technological development of the country.

Can the Patent office give any reason, why the official fee have been enhanced by multiplying with a factor of two by not 1.9 or 1.8 or 2.5 or 2.6 and even 3. No efforts seems to have been made to see that the official fee should if enhanced should be on a rational scientific manner and not in a arbitrary manner.

With regards
Yours Sincerely
MP Bhatnagar

Neha Chugh (IN/PA - 862)
Reg. Patent Agent

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Date: 19.06.2013

To
Secretary,
Ministry of Commerce and Industry
Government of India
Udyog Bhawan
New Delhi - 110011

Re: Comments regarding amendment of the Patent Rules 2003 (Fee Schedule) under sub-section (1) of section 159 of the Patent Act, 1970 as per the notification by the Ministry of Commerce and Industry in the Gazette of India, Extraordinary, published on May 06, 2013 under PART II- Section 3 Sub-section (i)

Dear Sir,

With reference to the notification by the Ministry of Commerce and Industry in the Gazette of India, Extraordinary, published on May 06, 2013 under PART II- Section 3 Sub-section (i) regarding the amendment of the Patent Rules 2003 under sub-section (1) of section 159 of the Patent Act, 1970, please find our comments below:

1. There has been no significant increase in the number of applications filed in India for the last couple of years. Increasing the charges will result in even fewer applications per year. This will have a negative impact on the economy of India.
2. The patent office fees in India are already higher than many countries. Applicants entering the National phase in India via the PCT route will be discouraged due to the increase in charges. The proposed increase in the fees is higher than the official charges in China. China crossed the 1 million mark of number of patent applications per year in 2011. How will we compete with such figures if the we increase the official fees by 100% which will then be higher than the fees of Chinese Patent Office.

3. It is now taking almost 5 - 6 years for the First examination Report to be issued. Since the number of Requests for Examination is higher than the number of Examination Reports issued each year, the back log of pending applications is thereby increasing every year.
4. The Patent Office does not allow amendment/deletion of even non-patentable claims during entry of national phase applications, by way of administrative order. Therefore the applicant have to pay fees for extra claims that have to cancelled later on as they are non-patentable in India. Increasing the charges will be unfair and not appreciated by the foreign applicants.
5. Moreover, there is no information about sequence listing in the fee schedule. We suggest there should be a flat rate for all sequence listings.
6. There is a proposed increase in the fees for applications made physically at the Patent office, compared to those made online. Higher fees for physical filing cannot be acceptable. The server of the patent office is very slow during office hours, making e-filing a very cumbersome process. Uploading big files is very time consuming and usually the website page becomes inactive after a certain period and the whole process of uploading has to be started again. It is not possible to depend on e-filing for deadline cases.
7. The payment gateways for e-filing on the website are also very limited.
8. Only Patent Agents can register for e-filing and normal applicants will have to pay an extra fee. This by itself is an unfair.
9. The applicants with granted Patents, who pay annuity every year, will be discouraged to maintain their patent in India if the renewal fee is doubled.

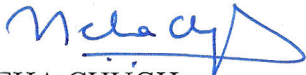
We believe that the proposed increase in fees (100%) will discourage Indian inventors and foreign applicants from filing applications in India. This will have an adverse effect on the economy and growth of India.

Under these circumstances we request you to please reconsider the amendment and the increase in the Fee Schedule.

Please acknowledge the safe receipt of this letter.

Yours faithfully

For **IPR International Services**



NEHA CHUGH
ADVOCATE
IN/PA - 862

PAA was a media partner in the Managing IP India and Innovation Forum 2013



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