

# Patent Filing Strategy Guide for Startups (India)

Comprehensive guide to filing strategy, costs, timelines, and common mistakes for Indian startups

## HOW TO USE THIS TEMPLATE

1.	Read this guide before your first conversation with a patent attorney.
2.	File a provisional application (Form 2A) BEFORE any public disclosure — grants 12 months to decide.
3.	The 80% fee reduction for DPIIT-recognised startups applies to filing, examination, and appeal fees.
4.	Speed of examination: request expedited examination (Form 18A) — reduces wait from years to months.
5.	Build a portfolio strategically — one strong patent often beats ten weak ones.

## 1. THE INDIAN PATENT SYSTEM — FOUNDATIONS

**1.1 Governing Law.** Patents in India are governed by the Patents Act 1970 as amended by the Patents (Amendment) Acts of 1999, 2002, and 2005, and the Patents Rules 2003 as amended. India is a member of the Patent Cooperation Treaty (PCT), the Paris Convention, and TRIPS, meaning Indian patents can form the basis for international filings.

**1.2 What Can Be Patented in India.** To be patentable in India, an invention must be: (a) **Novel** — not anticipated by prior art anywhere in the world; (b) **Inventive** — not obvious to a person skilled in the relevant field; and (c) **Industrially applicable** — capable of being made or used in an industry. Importantly, India has strong exclusions under Section 3 of the Patents Act 1970, including: methods of agriculture and horticulture; methods of medical treatment; mere discoveries of natural phenomena; mathematical methods and mental acts; computer programmes per se (though software with technical effect may be patentable); business methods per se; and mere new forms of known substances without enhanced efficacy (the Section 3(d) provision famously used against Novartis in 2013).

**1.3 Patent Term and Maintenance.** A granted Indian patent has a term of twenty (20) years from the filing date of the complete specification. Annual renewal fees (annuities) are payable from the end of the second year after filing. Failure to pay renewal fees results in lapse. A lapsed patent can be restored within 18 months under Section 60 of the Patents Act.

## 2. THE FILING PROCESS — STEP BY STEP

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<p>1. Invention disclosure</p>	<p>Submit Employee Invention Disclosure Form to IP team</p>	<p>IDF (internal)</p>	<p>Nil</p>	<p>Within 14 days of invention</p>
<p>2. Prior art search</p>	<p>IP team conducts preliminary search on PatSeer, Espacenet, Google Patents</p>	<p>N/A</p>	<p>Nil (internal)</p>	<p>Within 2 weeks of IDF</p>
<p>3. Attorney briefing</p>	<p>Inventors brief patent attorney — prepare invention disclosure document</p>	<p>N/A</p>	<p>Attorney fees</p>	<p>Week 3–4</p>
<p>4. Provisional application</p>	<p>File Form 2 (Provisional) — secures priority date, grants 12 months</p>	<p>Form 2 + Form 1</p>	<p>Rs. 1,750 (startup)</p>	<p>Before any public disclosure</p>
<p>5. Complete specification</p>	<p>File Form 2 (Complete) within 12 months of provisional</p>	<p>Form 2 complete</p>	<p>Rs. 4,400 (startup)</p>	<p>Within 12 months of provisional</p>
<p>6. Request for examination</p>	<p>File Form 18 (ordinary) or Form 18A (expedited)</p>	<p>Form 18 / 18A</p>	<p>Rs. 4,000 / Rs. 8,000 (startup)</p>	<p>At filing or within 48 months</p>

7. Respond to FER	First Examination Report — respond within 12 months (extendable)	Form 13 if extension needed	Attorney fees	Within 12 months of FER
8. Grant	Patent granted and published in Patent Office journal	N/A	Nil	Varies — 2–5 years typical
9. Annual renewal	Pay renewal fees to keep patent in force	Form 4	Rs. 800–4,400/year (startup)	Each year from year 3

### 3. STARTUP AND MSME FEE BENEFITS

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Large entity (>500 employees)	Rs. 17,500	Rs. 20,000	Rs. 4,400	Nil
Small entity / MSME	Rs. 8,750	Rs. 10,000	Rs. 2,200	50% discount
Startup (DPIIT-recognised)	Rs. 4,400	Rs. 4,000	Rs. 800	80% discount
Natural person (individual)	Rs. 4,400	Rs. 4,000	Rs. 800	80% discount

**Note on Startup Status:** DPIIT recognition must be current at the time of filing to claim the 80% discount. If startup recognition expires during prosecution, subsequent fees will be charged at the small entity rate. Confirm your DPIIT recognition status before each major filing.

### 4. PATENT STRATEGY FOR DIFFERENT IP SCENARIOS

**4.1 Core Technology Patent — File First.** If your startup's core technology is novel and not obvious, file a provisional application immediately. This is your first defensive move. The provisional need not contain claims — it just needs to describe the invention in enough detail to establish the priority date. The complete specification with claims must be filed within 12 months.

**4.2 Feature Patents — Build a Moat.** Beyond core technology, identify two to five specific product features or methods that: (a) provide measurable commercial advantage; (b) would be difficult to design around; and (c) are novel and non-obvious. File separate patents for each. A portfolio of specific, defensible feature patents creates a

stronger moat than one broad patent.

**4.3 Defensive Publication — When Not to Patent.** If a technical approach is likely to be developed independently by competitors and you do not wish to file a patent (due to cost or disclosure concerns), consider defensive publication. Publishing a detailed technical description in a journal, blog, or patent database as prior art prevents competitors from patenting the same approach. This is useful for obvious improvements that do not clear the inventive step bar.

**4.4 Trade Secret vs Patent Decision.** For process innovations and algorithms: a patent requires full public disclosure of how the invention works; a trade secret requires absolute secrecy. Choose patent protection when: the invention can be reverse-engineered from the product; you want to license it to third parties; or you want to use it offensively against infringers. Choose trade secret when: the process is impossible to reverse-engineer; the secret can be maintained indefinitely; and you have no intention to license.

## 5. PATENT OFFICE CONTACTS AND RESOURCES

Indian Patent Office — Head Office	Intellectual Property India, CP-2, Sector V, Salt Lake, Kolkata 700091
IPO Patent Filing Portal	ipindiaonline.gov.in — online filing available 24/7
Patent Search Database	ipindiaonline.gov.in/patentsearch — free prior art search
Espacenet (European Patent Office)	worldwide.espacenet.com — free global patent search
Google Patents	patents.google.com — free comprehensive patent search
PatSeer	patseer.com — commercial tool for deeper patent analytics
DPIIT Startup Patent Facilitation	Apply via startupindia.gov.in for facilitated attorney and 80% fee waiver
Patent Agent Directory	ipindia.gov.in — list of registered patent agents in India

## 6. COMMON MISTAKES AND HOW TO AVOID THEM

- **Public disclosure before filing:** Any publication, conference presentation, demo, or investor pitch where the invention is disclosed starts a 12-month clock in India (and in some countries NO grace period). Always file at least a provisional before any public disclosure of technical details.
- **Waiting too long after the provisional:** The 12-month window from the provisional filing date to the complete specification is absolute. There is no extension. Missing this deadline means losing the provisional's priority date.
- **Filing in the inventor's name instead of the company:** All patent applications should be filed in the company's name, not individual inventors. Inventors are named as inventors but the applicant should be the company. Retrospective assignment is possible but costly.
- **Not requesting expedited examination:** Ordinary examination queues at the Indian Patent Office can stretch to several years. DPIIT-recognised startups can request expedited examination (Form 18A) — this typically reduces the examination wait to 6–18 months.
- **Narrow claims only:** Have your patent attorney draft claims at multiple levels of breadth — broad independent claims for maximum protection and narrower dependent claims as fallbacks. All-narrow claims give up scope unnecessarily.

### IMPORTANT NOTE

**CRITICAL TIMING RULE:** In India, you have **NO** absolute right to file after public disclosure — Section 29 provides only a 12-month grace period for disclosure at an international exhibition. For all other disclosures, file **BEFORE** you disclose. When in doubt — file the provisional today. The Rs. 1,750 filing fee is trivial compared to losing your patent rights permanently.