

# Patent Infringement Evidence Checklist (India)

Systematic evidence collection checklist for building a patent infringement case in India

## HOW TO USE THIS TEMPLATE

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| 1. | This document: Patent Infringement Evidence Checklist (India). |
| 2. | Fill all bracketed fields before use.                          |
| 3. | Template only — not a substitute for qualified legal advice.   |

## 1. PRE-COLLECTION VERIFICATION

**Patent Status — Verify First.** Before collecting any evidence: (a) confirm the patent is granted and in force at [ipindiaonline.gov.in](http://ipindiaonline.gov.in); (b) confirm all renewal fees are current (a lapsed patent cannot be enforced — lapse is the most common shock discovery before filing); (c) confirm the Company is the registered proprietor (not a founder or individual inventor); (d) confirm no post-grant opposition or revocation proceedings are pending that could affect validity.

**Preliminary Infringement Analysis.** Engage your patent attorney to conduct a preliminary infringement analysis: map each element of the patent's independent claims to the features of the alleged infringing product or process. Only proceed to evidence collection if the preliminary analysis supports a plausible infringement case — collecting expensive evidence for a weak case is not good IP management.

**Covert Collection First.** Collect evidence before any contact with the infringer. Once alerted, an infringer may: modify their product to avoid infringement; destroy evidence; transfer assets; or file an invalidity challenge. The element of surprise in evidence collection is operationally important.

## 2. PRODUCT PURCHASE AND TECHNICAL EVIDENCE

**2.1 Product Purchases.** Purchase samples from at least 3 different sources (online, retail, distributor). Retain all: purchase receipts with dates and seller identity; product packaging, inserts, and labels; warranty cards identifying manufacturer; and online order confirmations. Multiple purchase sources establish commercial availability and scale.

**2.2 Technical Documentation.** Archive all publicly available technical information: product datasheets, white papers, specification sheets; user manuals and technical guides; patent claims by the infringer about their own technology (any patents or patent applications they hold covering the infringing product); and conference presentations, academic papers, or press interviews describing the technology.

**2.3 Reverse Engineering Report.** For technical products, commission a reverse engineering report from a qualified technical expert. The report must: document the disassembly and analysis of the infringing product; identify the specific technical mechanisms; map those mechanisms to each element of each patent claim; and be written as a formal expert declaration suitable for filing in court. The reverse engineering must be conducted lawfully — no unauthorised access to systems or decompilation in violation of software licence terms.

**2.4 Process Infringement Evidence.** For method patents (where the infringement is in a process, not a product): obtain samples of output produced by the infringing process; gather any descriptions of the process from the infringer's own public statements or technical documents; and engage a technical expert to reverse-engineer the

process from output samples where possible. Section 104A of the Patents Act 1970 shifts the burden of proof to the defendant for process patents — once a product identical to one produced by the patented process is shown, the defendant must prove their process is different.

### 3. COMMERCIAL EVIDENCE AND DAMAGES

**3.1 Market Research.** Establish the commercial scale of infringement: estimated units sold (market research reports, distributor interviews, e-commerce sales rank data, import/export records); prices charged (online listing screenshots); geographic markets served; first date of sale (when did infringing product first appear?); and named customers and distribution channels.

**3.2 Damages Theories.** Prepare evidence for both damages approaches: (a) Actual Damages — your lost sales; price erosion caused by infringing competition; lost licensing revenue; and expert economist's assessment. (b) Account of Profits — the infringer's total revenue and profits from the infringing product; this typically requires discovery and financial disclosure by the infringer during litigation. Courts award the higher of actual damages or account of profits.

**3.3 Reasonable Royalty Evidence.** If actual damages are uncertain, prepare evidence for a reasonable royalty award: comparable patent licences you have granted; industry royalty rate benchmarks; any prior negotiations with this infringer about a licence; and the hypothetical negotiated rate at the time infringement began.

**3.4 Marking Requirements.** Check whether your patent is marked on licensed products. Under Section 111 of the Patents Act 1970, if the patented article is not marked with the patent number, damages for infringement before the defendant received actual notice may be reduced. Ensure all licensed and Company products are marked 'Patent No. INXXXXXX' to protect the full damages period.

### 4. LITIGATION READINESS CHECKLIST

- Patent status confirmed — granted, in force, owned by Company
- Claim chart prepared — all elements of at least one independent claim mapped to infringing product
- Product samples purchased from 3+ sources with all receipts and packaging
- Technical evidence archived — datasheets, user manuals, online specifications
- Reverse engineering report commissioned or obtained
- Commercial evidence compiled — sales data, market research, pricing
- Damages analysis prepared — actual damages and account of profits estimates
- Cease and desist letter sent and response period expired
- Jurisdiction assessed — infringer's registered office state / High Court with IP Division
- IA application drafted alongside main plaint
- Board resolution authorising litigation obtained
- Litigation budget Rs. [X] approved by CEO and CFO

#### IMPORTANT NOTE

Working template for Patent Infringement Evidence Checklist (India). Verify requirements with a qualified IP advocate before use.

## DIGITAL AND SOFTWARE PATENT INFRINGEMENT EVIDENCE

**Software Patent Infringement — Special Challenges.** Software runs on servers, in cloud environments, and on users' devices — the infringing 'product' may not be physically available for purchase. Evidence approaches for software patent infringement: (a) API testing — send API requests to the defendant's service and document the responses; the API behaviour can establish that the claimed method is being practiced; (b) network traffic analysis — analyse the network traffic of the defendant's application to understand the data processing methods; (c) source code discovery — in litigation, the court can order disclosure of source code under a strict confidentiality order; and (d) the defendant's own patent applications and technical publications describing their technology.

**Cloud and SaaS Patent Infringement.** When the allegedly infringing technology is operated as a cloud service: document the user experience of the infringing service step by step, mapping it to the method steps of the patent claims; preserve API documentation, technical blog posts, and any published architecture descriptions; engage a cloud architecture expert to provide a technical opinion on the likely implementation based on observable behaviour; and assess whether the infringement is in the cloud provider's infrastructure, the SaaS vendor's code, or both.

**Continuous Evidence Updates.** Software products change frequently. Establish a periodic evidence update protocol: re-test the infringing product quarterly and document any changes; update the claim chart to reflect any product modifications; and assess whether any design-around has successfully removed the infringement. If the product is redesigned to avoid infringement after the C&D, document when the change occurred — you can still claim damages for the period of past infringement.

**Protecting Your Evidence Collection.** All evidence collected for potential litigation should be: stored in a secure, access-controlled repository; accompanied by a clear chain-of-custody record (who collected it, when, how, and where it is stored); and not disclosed to any person outside the legal privilege circle without authorisation. Premature disclosure of your evidence collection strategy can allow the infringer to adapt their arguments before litigation begins.

## INDIAN PATENT OFFICE — OPERATIONS AND BEST PRACTICES

The Indian Patent Office processes approximately 50,000 applications annually, with technology and pharmaceutical applications dominating filings. Understanding the IPO's examination guidelines and the specific examiners assigned to your technology area can meaningfully improve prosecution outcomes. Examination is conducted by technical examiners with engineering or science backgrounds — drafting

claims with technical precision and providing detailed technical rebuttals to objections is more effective than purely legal arguments. Each First Examination Report (FER) must be responded to within 6 months from issuance, extendable to 9 months on request with a fee. Extensions must be applied for before the original deadline expires. A failure to respond within the extended period results in th

e application being deemed to have been abandoned. On receiving a FER: read every objection carefully; prepare a technical rebuttal addressing each objection specifically; consider whether claim amendments are appropriate to distinguish the prior art cited; and brief your patent advocate fully on the technical distinctions between your invention and the cited prior art. The prosecution history of

a patent — all FERs and responses — is part of the public record and becomes relevant in infringement and invalidity proceedings (prosecution history estoppel). Avoid making admissions in FER responses that unnecessarily limit claim scope. For international applications filed through PCT and entering the Indian national phase, be aware that the PCT international search report and written opinion a

re considered during Indian examination. A positive PCT search report (where the ISA found no relevant prior art) facilitates Indian examination. A negative PCT search report does not prevent grant in India but requires specific technical arguments distinguishing the cited references.