

IP Hotline

September 13, 2017

EXPEDITED GRANT OF PATENT IN INDIA – A MYTH OR REALITY?

In 2016, an amendment to the Patent (Amendment) Rules, 2005 (“**2016 Amendment Rules**”) was brought about. This was done primarily to remove bottlenecks in the patent process, clear pendency of cases, and encourage more filings with a view to give impetus to protection of technological advancement and innovation. When the 2016 Amendment Rules were notified, there were several doubts if the amendments would, in fact, speedup patent registration. It seems that’s these doubts have been put to rest as the Indian Patent Office (“**IPO**”) has outperformed itself and has granted a patent¹ within less than 4 months from the date of filing an application for expedited examination. In this matter, the applicant had filed a request for expedited examination on March 21, 2017, and the IPO issued the first examination report within less than two weeks on March 31, 2017 to which a reply was filed on May 4, 2017, after which the hearing was held on June 23, 2017, the patent was granted on July 12, 2017.

WHAT IS A REQUEST FOR EXPEDITED EXAMINATION AND WHO CAN FILE SUCH AN APPLICATION?

A request for expedited examination is an application filed by an applicant requesting the IPO to expedite the examination of the relevant patent application.

An application for expedited examination maybe filed by²

- a Patent Co-operation Treaty (“**PCT**”) applicant nominating the IPO as its International Searching Authority (“**ISA**”) or as an International Preliminary Examining Authority (“**IPEA**”) in the corresponding international application; or
- a Startup.³

PROCEDURE FOR FILING AN EXPEDITED APPLICATION

A. Request of Examination

A request for expedited examination maybe filed online in Form 18A within 48 months of the date of priority of the application or the date of filing the patent application whichever is earlier.⁴

However, if

- a request for normal examination has already been filed, the same can be converted into an application of expedited examination upon the payment of the balance fees.⁵
- the application has already been published or an application for publication has been filed, a request for expedited examination is required to be accompanied by such a request for publication.⁶

B. Examination by the IPO and Reply to such office action

For the purpose of examination⁷

- the examiner is required to examine the patent application and make his report within one month but not exceeding two months from the date of reference of the application to him.
- The Controller is required to dispose of such a report of the examiner within one month of receipt of such report; and
- the first statement of objections, if required, are to be issued within fifteen days from the date of disposal of the report by the Controller.

A reply to such office action is due to be filed within 6 months from the date of the examination report or within an extended period of 3 months (additional). However, it would be in the interest of the applicant to file their response at their earliest as the reply would be examined in the order in which such it is received by IPO.⁸

C. Examination by the IPO of the Reply and proceeding towards grant

The Controller is required to dispose of the application of expedited examination within a period of three months from the date of receipt of the last response to the first examination report or within three months from the last date to put the application in order for grant.⁹

However, such timelines do not envisage a pre-grant opposition which may be filed. Further, the IPO may by a notification limit the number of applications it will examine under the expedited examination route each year.

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