



# Patents (Amendment) Rules, 2021

## Why in News

Recently, the union government has introduced **Patents (Amendment) Rules, 2021** which has **reduced the fee for patent filing and prosecution** for educational institutions by 80%.

- It is aimed at **promoting innovation** and development of new technologies.

## Key Points

### ▪ About:

#### ◦ Patents:

- A patent is a form of preservation of **intellectual property**. It is an **exclusive right granted for an invention**, which is a **product** or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.
- To get a patent, technical information about the invention **must be disclosed to the public** in a patent application.

#### ◦ Patentability Criteria for an Invention:

- It should be novel.
- Must involve an inventive step (technical advancement)
- Capable of industrial application

#### ◦ Term of Patent:

- The term of every patent in India is **twenty years from the date of filing** the patent application, irrespective of whether it is filed with provisional or complete specification.

#### ◦ **Patents Act, 1970** : This principal law for patenting system in India came into force in the year 1972. It **replaced the Indian Patents and Designs Act 1911**.

- The Act was **amended by the Patents (Amendment) Act, 2005**, wherein **product patent was extended to all fields of technology** including food, drugs, chemicals and microorganisms.
- After the amendment, the **provisions relating to Exclusive Marketing Rights (EMRs) have been repealed**, and a provision **for enabling grant of compulsory license has been introduced**.
- The provisions relating to **pre-grant and post-grant opposition** have also been introduced.

### ▪ **Patents (Amendment) Rules, 2021:**

#### ◦ **Patent Fees for Educational Institutions Reduced:**

- **Educational institutions engage in many research activities**, where professors and teachers and students generate several new technologies which

need to be patented for facilitating commercialization of the same.

- At the time of applying for patents, the **innovators have to apply these patents in the name of the institutions which have to pay fees for large applicants**, which are very high and thus work as a disincentive.
- In this regard and to encourage greater participation of the educational institutions, **official fees payable by them in respect of various acts under the Patents Rules, 2003**, have been reduced by way of the Patents (Amendment) Rules, 2021.
- Benefits related to **80% reduced fee** for patent filing & prosecution have been **extended to all educational institutions**.
  - This benefit was earlier available to all recognised educational institutions owned by the government.
- **Extension of Expedited Examination System:**
  - The fastest granted patent is the one which was **granted in 41 days** after filing of such request. This facility of Expedited Examination system was initially provided for patent applications filed by Startups.
  - It has been **now extended to 8 more categories of Patent Applicants:**
    - SME (Small and Medium Enterprises), Female applicants, Government Departments, Institutions established by a Central, Provincial or State Act, Government Company, an Institution wholly or substantially financed by the Government and applicants under Patents Prosecution Highway.
    - The **Patent Prosecution Highway (PPH)** is a set of initiatives for providing accelerated patent prosecution procedures by sharing information between some patent offices.

## Note

- **Evergreening of Patent:** It is a corporate, legal, business, and technological strategy for extending / elongating the term of a granted patent in a jurisdiction that is about to expire, in order to retain royalties from them, by taking out new patents.
  - **Section 3(d) of the Indian Patent Act 1970** (amended in 2005) does not allow patents to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to efficacy.
  - This means that the **Indian Patent Act does not allow evergreening of patents.**
- **Compulsory Licencing (CL):** CL is the grant of permission by the government to entities to use, manufacture, import or sell a patented invention without the patent-owner's consent. Patents Act in India deals with CL.
  - CL is permitted under the **WTO's TRIPS (IPR) Agreement** provided conditions such as 'national emergencies, other circumstances of extreme urgency and anti-competitive practices' are fulfilled.

**Source: PIB**