

NATIONAL PHASE ENTRY IN INDIA



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The Indian PCT nationalization laws allow an applicant to file national phase entry within **thirty one (31)** months from the earliest priority date of the PCT application. Apart from few complexities, the procedure of nationalization is very easy.

Basic Filing Requirements: The following documents and information are usually required for a PCT national phase entry into India.

1. PCT Application number with date of filing
2. Name, address and nationality of applicants and inventors
3. Complete Specification translated in ENGLISH language, if not available in English language
4. Power of Attorney (POA) in favor of attorney filing the national phase entry – Can be submitted later
5. Assignment document from inventor (if applicable and can be submitted later)
6. International Search Reports (ISR) & Amendments filed under Article 19 or 34 under the PCT, if unavailable on PATENTSCOPE website
7. Certified priority document in case the applicant has not complied 17.1 (a or b) of regulations made under the PCT.

English is one of the official languages in India, and accordingly, acceptable language of communication and prosecution at the Indian patent office. This aspect of prosecuting applications in English, gives an advantage to various patent applicants.

POA Requirements: A POA is required to be signed by the patent applicant in favour of the attorney filing the national phase entry. Where the applicant is a company, the complete name and designation of the signatory must be indicated below the signature. The duly executed POA is usually paid with applicable stamp duty in accordance with Indian law.

Assignment document (if applicable): In case when the applicant and inventor are not same, i.e. the applicant (s) for the patent application are not the original inventor (s) of the invention, then an Assignment document (or commonly called “Proof of Right”) is required to be filed at the Indian Patent Office.

Alternatively, the applicant can also submit a declaration under official Form 1 duly signed by the inventors as the “Proof of Right”.

The assignment formality may be completed after filing the application in India within 6 months from the date of filing in India.

Amendments under Article 19 or 34: According to Article 19 or 34 of the PCT, the applicant is allowed to amend claims of his PCT application at the international stage, if he desires so. Indian laws allow and accept these amendments at the time of national phase entry in India. According to section [07.03.02](#) of Manual for Patent Practice and Procedures or the MPPP, an applicant has a choice to enter the Indian national phase with the original claims of the PCT or with the amendments under Article 19 or 34 in the international stage.

There are few complexities though in the nationalization process. One complexity is filing the nationalization with reduced number of claims. Unlike US and EPO laws, the Indian patent laws do not allow an applicant to file the entry with reduced number of claims as compared to the international stage to save applicant excess official fees, until the applicant has already reduced the number of claims by filing Article 19 or 34 amendments at the international stage.

The Indian nationalization procedure warrants the applicant to enter the PCT national phase with the same claims as in the PCT application at date of filing in India*, and pay the official fees with respect to those many claims.

This is a cumbersome burden on the applicant, especially considering the recent increase in the patent office fees. Although, there are court cases challenging this aspect of the laws, however, until a final court verdict is out, the applicants are bound to pay the official fees as per the claims in their international application at date of filing in India.



* Controller General of Patents, Designs and Trademarks (CGPDTM) vide notification dated July 20, 2012 had issued new instructions for filing PCT National Phase Applications in India clarifying the procedure of entry. The copy of the notice can be accessed [here](#).