

Foreign Start-Ups Now Eligible for Patent Fee Reduction and Expedited

Examination

In support of its start up India plan, the Indian Patent Office had introduced expedited examinations and fee reductions for start-ups in 2016. To qualify as a start-up, a registration with the Department of Industrial Policy and Promotion (DIPP) was required. Foreign start-ups were however considered to be ineligible for these benefits.

The Patents (Amendment) Rules, 2017 however has amended the definition of “start-ups” under the Patent Rules, 2003. The amended rules have brought about the following changes:

- clarified that Indian entities/companies will be considered as start-up, only if they are recognised under the Start-up initiative by the competent Authority
- included foreign entities under the definition of start-up

Indian Companies

With this amendment, for an Indian entity, start-up means “*an entity in India recognized as a start-up by the competent authority under Start-up initiative*”¹. This change has brought into the statute, the procedure that was being followed by the Indian Patent Office.

Any Indian entity, be it a private limited company², a partnership firm³ or a limited liability partnership⁴ can apply under the Start-up initiative for recognition as a start-up if it is:

¹ Patents (Amendment) Rules, 2017

² as defined in the Companies Act, 2013

³ registered under section 59 of the Partnership Act, 1932

⁴ under the Limited Liability Partnership Act, 2008)

- incorporated or registered for not more than seven years, or 10 years in case of entity in biotech sector;
- has a turnover for any of the financial years since incorporation/ registration not exceeding Rupees 25 crores (approx. 4 million USD); and
- is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

However, an entity that is formed by splitting up or reconstruction of a business already in existence would not be considered as a start-up.

To be recognized as a ‘Start-up’ an entity is required to file an online application with the Department of Industrial Policy and Promotion⁵, along with the following documents:

- Certificate of Incorporation/ Registration;
- other relevant details like details of the turnover, certificate by chartered accountants etc.;
- write-up about the nature of business highlighting how is it working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation⁶.

Foreign Companies

Under these rules *“In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation/registration as per Start-up India Initiative and submitting declaration to that effect, would be considered as a start-up.”*⁷. A foreign entity shall be

⁵ <http://www.startupindia.gov.in/registration.php>

⁶ Notification G.S.R. 501 (E), dated May 23rd May, 2017

⁷ Patents (Amendment) Rules, 2017

considered as a Start-up if it is incorporated or registered for not more than seven years, (for entities in the biotechnology sector not more than ten years), and has an annual turnover not exceeding INR 25 crore (approx. 4 million USD) in any preceding financial year⁸.

Thus, under the amended rules a foreign entity can also now take the benefit of a Start-up. These benefits include a reduced official fee. The official fee for an applicant that is a Start-up is 1/5th of the fee applicable of corporates. With these amendments in the rules, foreign applicants that are start-ups can now obtain patents expeditiously as they will now be eligible to file a request for expedited examination.

⁸ Notification G.S.R. 501 (E), dated May 23rd May, 2017