

## Form 27 in the Indian Patent System

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The Indian patent regime mandates transparency in the working of patented inventions through periodic disclosures by patentees. The recent declaration of the Patents (Amendments) Rules, 2024, has introduced significant modifications to the procedural and substantive requirements for filing Form 27, the annual working statement.<sup>1</sup> This manuscript provides a comprehensive overview of Form 27's legal basis under **THE PATENTS ACT, 1970**, its purpose, the implications of recent amendments, and the evolving jurisprudence surrounding compulsory licensing and patent working. It also critically examines the concerns related to confidentiality and data transparency, aligning with the provisions of the Right to Information Act, 2005.

**Keywords:** Form 27, Commercial Working of Patents, Ground Realities, Criticism

The Indian Patents Act, 1970, aims to promote innovation while balancing public interest through transparency and access. A key provision facilitating this balance is the requirement for patentees to submit annual statements on the working status of their patents via Form 27, as per **Section 146** of the Act and **Rule 131** of the Indian Patents Rules, 2003 (as amended in 2024). The amendments aim to streamline reporting procedures, update the form, and clarify the scope of disclosures, thereby enhancing transparency while addressing concerns related to proprietary information.<sup>2</sup>

### Purpose and Significance of Form 27

Form 27 serves as a statutory declaration by patent holders regarding the commercial utilization ("working") of their patents in India. It ensures that patents are actively contributing to public welfare, either through manufacturing, licensing, or imports, thus aligning with the objectives of **Section 83** of the Act, which emphasizes the promotion of inventions for public benefit.

#### Legal Basis

**Section 146** of the Patents Act mandates patentees and licensees to file annual working statements.

**Rule 131** of the Indian Patents Rules, 2003 (amended in 2024), prescribes the procedural framework, including timelines and form content.

#### Key Objectives

- Promote transparency regarding patent utilization.
- Prevent "patent ever greening" and misuse.

Facilitate public access to data on patent commercialization.

Enable the government to monitor patent working and consider compulsory licensing.

### The Evolution of Form 27 and Recent Amendments

#### Historical Context

Initially, Form 27 mandated patentees to declare whether their patents were worked ("yes") or not ("no") and to provide details of working, licensing, and imports. The form was designed to promote transparency but often faced criticism for potential misuse, especially concerning proprietary confidentiality.

#### 2020 Amendment and its Limitations

The Patent (Amendment) Rules, 2020, introduced key modifications:

Defined the scope of the reporting period as the **financial year (April 1 – March 31)**, replacing the earlier calendar year.<sup>3</sup>

Required submission **once per financial year**.<sup>4</sup>

Updated the form to include detailed disclosures on licensing, imports, and manufacturing.

Clarified that patentees could submit a single statement covering related patents.

The definition of a patent's "working" in India remains unchanged. In brief, details on the manufacturing of patented goods in India, including licenses, exports, and imports, as well as any kind of product or item made utilizing the patented technique, must be provided. To indicate whether the patent has

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been worked ('yes') or not worked ('no'), the patent holder must tick the corresponding box. Following this, you must fill out the following two parts of the statement with details on the patent's operation or the reasons why the patented invention is not functioning, as well as the actions being done to make the invention operate in India.<sup>5</sup>

It boils down to the details on how much money came in in India from importing and manufacturing patents or related patents. One big relief for patentees is that they can just fill out one form for all their patents as long as they're all related. This means that the revenue or value from one patented invention can't be calculated independently from the revenue or value from related patents, and the same people can be granted all these patents. A concise summary of the manufacturing, licensing, and import processes (no more than 500 words) is required. "The elimination of a requirement in the Patent Rules 2003 states that patentees no longer need to indicate whether the patented product has fulfilled the reasonable requirements of the public in India." Also, you no longer have to disclose the amount of production or import into India, which was previously a necessity.

#### The 2024 Amendments: Key Changes

The latest **Patent (Amendments) Rules, 2024**, further refine the process:

- (i) **Streamlined timelines:** Filing within six months after the end of each financial year.
- (ii) **Enhanced focus on data accuracy:** The form now explicitly requests detailed information on **manufacturing, licensing, and import** revenues, with provisions to explain **non-working** status.
- (iii) **Confidentiality safeguards:** While the Act permits the Controller to publish information, the amendments aim to balance transparency with confidentiality, addressing patent holders' concerns.
- (iv) **Unified filing for related patents:** A single form can cover multiple related patents, simplifying compliance.

#### Scope and Content of Form 27

##### Mandatory Information

Patentees or licensees must disclose:

- (i) Name and address of the patentee/licensee.
- (ii) Nationality.
- (iii) Patent number(s).

- (iv) Financial year for which the statement is filed.
- (v) Details of the patent's working status ("yes" or "no").
- (vi) If working, provide:
  - a. Revenue or value earned in India.
  - b. Breakdown of manufacturing, licensing, and import revenues.
- (vii) If not working, reasons and actions taken to make the patent work.

##### Certification and Signatures

The form must be signed by the patentee, licensee, or authorized agent, affirming the accuracy of the statement.

##### Effect of Non-working of Patent in India

At the end of the third year after the patent's award, any interested party who has not been successful in obtaining a voluntary license from the patentee may apply to the Controller for a forced license. According to the Act, this individual must prove that one of the three scenarios outlined in Section 83 has occurred.<sup>6</sup>

The patent remains in effect even if it does not function properly. In India, a functioning statement is filed with a granted patent to keep the public apprised of how the invention is functioning, or lack thereof.<sup>7</sup>

Once three years have passed from the date of patent issuance, any interested person may submit a request for a compulsory license on the following grounds:

- (i) no one has yet met the public's reasonable requirements about the patented innovation, or
- (ii) Nobody can buy the patented product since it's too expensive, or
- (iii) The patented innovation is not being implemented inside India's borders.

If any third party makes such a request, the Applicant will be notified. Upon review, the Controller has the discretion to give the applicant a compulsory non-exclusive license for the remaining patent period, except in situations where a shorter term would be in the public interest. After the two-year period from the date of the compulsory license's issuance, any interested party or the government may apply to have the patent canceled if it is determined that the patent has not fulfilled its intended purpose. It is worth mentioning that the Controller made use of Form 27 filed by Bayer to determine that the patented medicine NEXAVAR had

not been tested in India while giving the first required license to NATCO for the drug.

It is not possible for the Controller to unilaterally revoke a patent under Section 64 of the Act, and the term “non-working” cannot be used as a basis for such a ruling. Patent revocation would not result immediately from non-working. When choosing whether or not to award a compulsory license, the Controller of Patents considers a number of considerations; the procedure is not simple and is carried out by the Indian Patent office. This occurrence is quite unusual. Granting a compulsory license will depend on more than just the patent's affordable price and functionality, while the patent's lack of functionality may aid a third party in making an initial argument.

## Legal and Practical Implications

### Consequences of Non-Compliance

Penalties include **up to six months imprisonment**, fines, or both under **Section 122(1)(b)** of the Act.

Providing false information is a punishable offense, risking imprisonment and fines.

### Impact on Patent Rights

Non-filing or false declarations may influence the patent's enforceability.

Persistent non-compliance can lead to **revocation or compulsory licensing** under **Section 83** and related provisions.

### Data Transparency and Public Interest

The **Right to Information Act, 2005**, mandates disclosure of patent working data unless exempted. The government may publish anonymized or aggregated data, promoting transparency and public oversight. As per the latest CGPDTM Annual Report 2022-23, the number of patents filed and worked in India shows a significant trend (Table 1).

This indicates an increasing trend in patent filings and a modest rise in patents reported as working, reflecting greater compliance and awareness.

## Case Law and Developments in Compulsory Licensing

Recent cases, such as Bayer's attempt to prevent compulsory licensing of NEXAVAR, highlight the importance of accurate working data. The Indian courts and Patent Office consider non-use or non-disclosure as potential grounds for licensing or

revocation, though **non-working alone** does not automatically revoke a patent (**Section 64**).

The **2024 amendments** aim to strengthen enforcement and data collection, providing a clearer framework for compulsory licensing based on patent utilization. The nation's socio economic development, industrial growth, and employment creation are all greatly aided by functionally patented innovations. Otherwise, the issuing state would reap no advantages from maintaining patent offices and patent monopolies.

Recognizing this, a **Division Bench**<sup>8</sup> of the Delhi High Court rejected a request for a temporary restraining order on the grounds that the plaintiff had not engaged in any work related to the patent in India—a position often advocated by the defendants in cases involving patent infringement.

It opined that accepting the patentee's contention regarding non-working “*would seriously affect the market and economic conditions in our country in as much as it would enable a mechanical device, invented abroad (or in India) to be registered in India and kept unused thereby excluding public of its benefit, and, at the same time precluding a similar device being produced or used in our market or industry*”.<sup>9</sup>

In **FMC Corporation & Ors. v GSP Crop Science Private Limited**<sup>10</sup> (2022), While considering FMC's plea for a temporary restraining order over an agrochemical manufacturing method patent, the Delhi High Court took notice of the following about the operation of the patent and the actions of the plaintiff:

“The plaint claims that the process covered by the suit patent is ‘commercially very successful... This is in stark contrast with the Form 27 dated 8th September 2022 where it is categorically *admitted by the Plaintiffs that the product is not being worked in India...*”

While the Court did deny the interim relief on several grounds, it did make some insightful remarks on the possible connection between non-working and lack of industrial applicability, which is why it denied the relief.

Table 1 — CGPDTM Annual Report 2022-23

Parameter	2022-23 Data	Change from 2021-22
Total patents filed in India	65447	+4.4%
Patents granted	47754	+5.2%
Patents working (reported via Form 27)	10950	+2.8%

*“The non-working of the suit patent for more than 20 years from the priority date and 19 years since filing in India, raises serious doubts as to the industrial applicability of the suit patent itself. Although the threshold for industrial applicability at the time of granting a patent is not very high, at the stage of interim injunction, where the invention has not been worked for more than 19 years and the term of the patent has nearly expired, this Court would be hesitant to grant an interim injunction”.*

### US Criticisms and Ground Realities

The *2023 Special 301 Report of US Trade Representative*<sup>11</sup> continues to place India on priority watch list stating, “Patent issues continue to be of particular concern in India”. It maintains that reporting requirements under patent law are “excessive”.

The Manual specifies that patent examiners are required to search the WIPO Centralized Access to Search and Examination (CASE) system and Digital Access Service (DAS) for information submitted by patent applicants in other jurisdictions.” This is to prevent patent applicants from other jurisdictions from filing duplicate information with India. Nevertheless, stakeholders have expressed concerns about the lack of consistency in this approach, and questions remain over the scope of reporting obligations and the repercussions for noncompliance.

Form 27's updated version has garnered positive feedback from certain quarters, but many are still worried about how the Indian government would handle the sensitive company information that parties must give. The United States will continue its engagement with India on the subject of how to handle commercially secret information pertaining to patent operations, including the obligations of Form 27, and it salutes India's continuing domestic deliberations on the matter.

### IPO Annual Report 2021-22

Government statistics in India show that just around 8.30% of active licenses are really being used. According to the licenses for which Form 27 was documented, an astounding 82.52% of the licenses are still unworked (Fig. 1). This raises some challenging questions regarding (I) the benefits accruing to the Indian state from license awards, (ii) the working necessities required by initial public offerings and what happens when proclamations are misleading or

not recorded under Section 122, (iii) patentees obvious disregard for legal arrangements, (iv) the consequences of awarding or refusing mandatory licenses or break reliefs in patent prosecution, and (v) specifically, is there anything to be gained by relaxing Form 27 detailing prerequisite proposed in the revised draft Patent Guidelines, considering that hardly any licenses are worked and only one obligatory permit has been granted as mentioned earlier. Despite reforms, concerns persist regarding the efficacy of India’s working requirement, with commentators such as the 2023 Special 301 Report, Office of the United States Trade Representative<sup>12</sup> and Sneha Jain & Victor Vaibhav Tandon<sup>13</sup> noting that it remains largely unenforced in practice.

In November 2019, the government of India revised the Manual of Patent Office Practice and Procedure in response to stakeholder complaints over the country's patent reporting obligations. In October 2020, the government revised Form 27 on patent functioning.<sup>14</sup>

### Challenges and Criticisms

Despite reforms, concerns persist:

- (i) **Confidentiality:** Patent holders worry about revealing proprietary information.
- (ii) **Data accuracy:** Enforcement depends on truthful disclosures.
- (iii) **Implementation:** The patent office faces resource constraints in verifying data.
- (iv) **Legal ambiguities:** Sections referencing "non-working" are often misinterpreted; the law clarifies that non-use is not automatically grounds for revocation.

### Analysis

The recent declaration of the Patents (Amendments) Rules, 2024, marks a significant shift in the regulatory

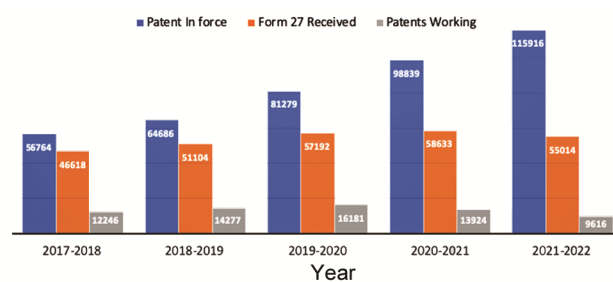


Fig. 1 — Trends in Patent Filing, Grant, and Working in India (2021–2022)

Source: Data from IP India Annual Report 2021-2022 (data in tabular format converted to bar graph)

landscape surrounding patent transparency and enforcement in India. These amendments have introduced several key changes, such as streamlined filing timelines, enhanced focus on data accuracy, confidentiality safeguards, and the ability to file a single Form 27 for related patents. These provisions are designed to facilitate better monitoring of patent utilization and to balance transparency with proprietary confidentiality.

Legally, these amendments are anchored firmly within the framework of THE PATENTS ACT, 1970, particularly under Section 146 and Rule 131 of the Indian Patents Rules, 2003. The amendments clarify that patentees are now required to provide more detailed information on manufacturing, licensing, and import revenues, with explicit provisions to explain non-working status, thereby improving the quality of data available to the authorities.

The significance of these amendments becomes evident when considering recent jurisprudence and policy trends. For example, in the *Nexavar* case, the Controller relied on Form 27 filings to determine the working status of Bayer's patent, which influenced the issuance of a compulsory license to Natco. Such cases underscore the importance of accurate and updated data, especially in the context of public health and access to medicines.

In summary, the 2024 amendments to Form 27 reinforce the legal framework for patent management in India by promoting transparency, providing safeguards for confidential information, and simplifying compliance for patent holders. These changes will likely influence future patent enforcement strategies and policy decisions, especially in sectors where patent working directly impacts public access and health.

## Conclusion

From the perspective of patent portfolio management, it is essential to classify innovations being developed in India based on their scope and commercial strategy. Whether a patent covers a single unit intended for individual sale or pertains to a new chemical entity with broader applications influences the approach to patent working disclosures. Given the limitations in quantifying revenue attributable solely to a patented technology—especially when innovative products have multiple technical uses or are integrated into complex systems—patentees often rely on aggregate figures, such as total sales

volume and overall value in Indian Rupees, to demonstrate utilization.

The recent amendments to Form 27 and the Patent Rules reflect India's commitment to balancing transparency with patent rights. While enforcement and compliance are improving, ongoing vigilance is necessary to ensure that patent working data effectively promotes innovation, public access, and fair competition. By refining Form 27, these amendments aim to balance the interests of patent holders with public welfare considerations. The updated data and jurisprudence indicate a cautious move towards more transparent patent management, which could influence future patent policy and enforcement.

## References

- 1 The Patents Act, 1970.
- 2 Indian Patents Rules, 2003 (Amended 2024).
- 3 CGPDTM Annual Report 2022-23: [https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1\\_114\\_1\\_ANNUAL\\_REPORT\\_202223\\_English.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_114_1_ANNUAL_REPORT_202223_English.pdf).
- 4 Suresh R, Filing of Patent Information Form-27 for FY 2021-22 India Filings (2022).
- 5 Vadehra S, Priya K & Mittal S, The Statement of Working of Patents in India (Form 27) – A Complete Guide, Mondaq (2022).
- 6 Jha A & Gokhal e G, Attention Patentees: Deadline to File Form 27 Approaches, Nishith Desai Associates (2013).
- 7 Bennett P, Indian Form 27 Requirements (Annual Working Statement), Marks & Clerk (2021), available at <https://www.marks-clerk.com/insights/articles/indian-form-27-requirements-annual-working-statement/>.
- 8 Highlights of Working Statement (Form 27) Notified under Indian Patent Rules, 2003, Intepat IP (2020).
- 9 Dewan M, Annual Working Statements - Form 27 Fully Decoded, Lexology (2022).
- 10 The CGPDTM Annual Report 2022-23: [https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1\\_114\\_1\\_ANNUAL\\_REPORT\\_202223\\_English.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_114_1_ANNUAL_REPORT_202223_English.pdf)
- 11 Highlights of Working Statement (Form 27) Notified under Indian Patent Rules, 2003, Intepat IP (2020), available at: <https://www.intepat.com/blog/working-statement-form-27/>
- 12 2023 Special 301 Report, Office of the United States Trade Representative (2023), available at: <https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf> (accessed on 31 January 2024).
- 13 Jain S & Tandon V B, *Working requirement under Indian Patent law: A toothless tiger?*, Saikrishna & Associates (2023), available at: <https://www.saikrishnaassociates.com/working-requirement-under-indian-patent-law-a-toothless-tiger/> (accessed on 31 January 2024).
- 14 *FMC Corporation & Ors. v GSP Crop Science Private Limited*, High Court of Delhi (2022), available at: [http://164.100.69.66/jsearch/judgement.php?path=dhc/PMS/judgement/15-11-2022/&name=PMS14112022SC6622022\\_172422.pdf](http://164.100.69.66/jsearch/judgement.php?path=dhc/PMS/judgement/15-11-2022/&name=PMS14112022SC6622022_172422.pdf) (accessed on 31 January 2024).