

Patents (Amendment) Act, 2002

Section 9 - Amendment of Chapter Iv

In Chapter IV of the principal Act,--

(a) for the Chapter heading "Examination of Applications", the following Chapter heading shall be substituted, namely :--

"PUBLICATION AND EXAMINATION OF APPLICATIONS";

(b) before section 12, the following sections shall be inserted, namely :--

"11A. Publication of applications.--

(1) Applications for patents shall not be open to the public for a period of eighteen months from the date of filing or date of priority, whichever is earlier.

(2) Except when a secrecy direction is given under section 35, every application for a patent shall, on the expiry of the period as specified in sub-section (1), be published.

(3) The publication of every application for a patent shall be notified in the Official Gazette.

(4) In case a secrecy direction has been given in respect of an application under section 35, then it shall be published after the expiry of the period of eighteen months or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section--

(a) the depository institution shall make the biological material mentioned in the specification available to the public;

(b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

11B. Request for examination.--

(1) No application for a patent shall be required to be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within forty-eight months from the date of filing of the application for patent.

(2) In case of an application filed before the commencement of the Patents (Amendment) Act, 2002, a request in the prescribed manner for examination shall be made by the applicant or any other interested person within a period of twelve months from the date of such commencement or within forty-eight months from the date of the application, whichever is later.

(3) In case of an application in respect of a claim for a patent covered under sub-section (2) of section 5, a request in the prescribed manner for examination shall be made by the applicant or any other interested person within a period of twelve months from 31st day of December, 2004 or within forty-eight months from the date of the application, whichever is later.

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (2) or sub-section (3), the application shall be treated as withdrawn by the applicant :

Provided that--

(i) The applicant may, at any time after the filing of the application but before the grant of the patent, withdraw the application made by him; and

(ii) in a case where a secrecy direction has been issued under section 35, the request for examination may be made within forty-eight months from the date of revocation of the secrecy direction."