

Checklist - FAQ About Patents

What is a patent?

A *patent* is a grant of a property right by the Government to an inventor. The United States Constitution gives Congress the right to provide for patent protection in legislation in order to encourage useful inventions. The patent itself provides a detailed description of the invention, and how it is used or how to make it. Thus, if you obtain a patent you cannot keep the matter secret, which is the province of Trade Secret Law. A patent enables the owner to exclude others from making, using or selling the invention for the life of the patent.

Who issues patents?

In the United States, Patents are granted by the U.S. Patent and Trademark Office in Washington, D.C.

[How long does a patent last?](#)

In the [United States](#), under current [patent law](#) (2008), the term of patent is either 20 years from the earliest claimed filing date or 17 years from the issue date, depending on the filing date and the issue date (provided that the [maintenance fees](#) are paid in due time):

- For [applications](#) that were pending on and for patents that were still in force on June 8, 1995, the patent term is either 17 years from the issue date or 20 years from the earliest claimed filing date, the longer term applying.
- For applications filed on or after June 8, 1995, the patent term is 20 years from the earliest claimed filing date.

I have a great idea for an invention. Can I patent it?

A patent cannot be obtained on a mere idea. An invention may be a machine, a process, a new chemical or even a new type of plant.

Can I obtain copies of patents?

You can purchase printed copies of any patent if you have the patent number from the United States Patent and Trademark Office, Washington, DC 20231. Abstracts are also available in the Patent Office's website (searching is also available).

Can I obtain copies of applications for patents that are pending?

The general rule in the U.S. is that patent applications are maintained in secrecy with exceptions in certain special situations.

What types of invention are patentable?

There are three types of patents: utility patents, design patents and plant patents. The difference between a design [patent](#) and a utility patent is that a design patent protects the ornamental design, configuration, improved decorative appearance, or shape of an invention. This patent is appropriate when the basic product already exists in the marketplace and is not being improved upon in function but only in style.

A utility patent protects any new invention or *functional* improvements on existing inventions. This can be to a product, machine, a process, or even composition of matter. Examples of a utility patent would include a better [carburetor](#), a new type of self-fastening [diaper](#) or a new recipe. The life of a U.S. utility patent lasts 20 years from the date of filing assuming the patent is

granted, but the owner of the patent must pay maintenance fees to the [United States Patent and Trademark](#) Office to keep a utility patent from expiring.

A plant patent may be issued for a new and distinct, invented or discovered asexually reproduced plant including cultivated mutants, hybrids, and newly found seedlings, other than a plant found in an uncultivated state. A plant patent permits its owner to exclude others from making, using, or selling the plant for a period of up to twenty years from the date of patent application filing. Plant patents are not subject to the payment of maintenance fees.

Who may obtain a patent?

Patents are granted only to the true inventor. (If the inventor has died, then his estate may receive the patent.) However, patents (and applications) may be assigned to another individual or to a business or other legal entity.

When must I seek a patent?

You must file for a patent within one year of the date the invention was in public use or on sale in this country. If the invention has been described in any printed publication anywhere in the world, or if it has been offered for sale anywhere in the United States, for more than one year prior to the time an application for the patent has been filed, a patent will not be issued. Even your own use (in certain circumstances) and sale of the invention for more than a year before your application is filed will bar your right to a patent just as effectively as though the use and sale had been done by someone else.

What must an inventor demonstrate in an application for patent?

The invention must be novel. It must not be obvious to the hypothetical person having ordinary skills in the subject matter. It must also have some utility and not be frivolous in nature. Further, it is necessary to demonstrate that the invention can be made operable.

What does the term "patent pending" mean?

The terms *patent pending* and *patent applied for* are frequently used by a manufacturer to inform the public that an application for a patent on that article is on file. False use of the terms can result in a penalty.

Can I buy or sell patent rights?

Yes, if you are an inventor you may assign all or part of your interest in the patent application or patent to anyone by a properly worded assignment. The patent application itself must be filed in the U.S. Patent and Trademark Office as the invention of the true inventor, however, and not as the invention of the person who purchased the invention from the inventor.

What remedies are available for infringement of intellectual property rights?

The patent holder may seek a Temporary Restraining Order and a Preliminary or Permanent Injunction to prevent and/or stop further infringement. Allegedly infringing items or articles can be impounded while the action is pending and may be ordered destroyed or subject to other disposition if there is an infringement. An infringer can be liable for actual damages plus additional profits of the infringer or statutory damages. Costs and attorneys' fees sometimes also may be awarded to the prevailing party.

Can computer software be patented?

Computer hardware and software can become the object of a patent. Patents are meant to cover ideas, and "anything new under the sun made by man" has long been the subject of

patent law. Laws of nature, natural phenomena, mathematics, or other universal truths have not been patentable. However, before and after a patent is granted, there must be on file with the Patent Office a detailed description of the invention and the best technique the applicant knows of at the time he applies for realizing it. This description is made public when the patent issues, and that means that everybody can start working on the next improvement right away.

Can I get patent protection in foreign countries?

The United States patent protects your invention only in this country. If you want foreign patent protection you may have to file in foreign countries. Normally you would need a license from the Commissioner of Patents and Trademarks to file for a patent in another country within six months of filing in this country. Under treaties with most foreign countries, if you have filed a patent application in the U.S. it is possible to delay filing your application for a foreign patent for up to one year after the U.S. filing and still claim "priority" in the foreign country.

Are there different standards for obtaining patents in foreign countries?

Yes. For example, most foreign countries have an "absolute novelty" requirement for obtaining a patent.

What types of invention can be patented?

In order to be eligible for a patent, the invention must not be obvious to a person having ordinary skills in the subject matter and it must have some utility, (*i.e.*, proof that it can be made operable and not be frivolous in nature).

An invention must fall within one of four main classes of inventions to be patentable:

- process (such as how a product is manufactured or treated);
- machines;
- articles of manufacture; or
- composition of matter.