Basic Patent Information from the USPTO
(Redacted)
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What Is a Patent?

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available.

The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

There are three types of patents:
1) Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

2) **Design** patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and

3) Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

What Is a Trademark or Servicemark?

A trademark is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms "trademark" and "mark" are commonly used to refer to both trademarks and servicemarks.
Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks which are used in interstate or foreign commerce may be registered with the USPTO. The registration procedure for trademarks and general information concerning trademarks is described on a separate page entitled "Basic Facts about Trademarks" (http://www.uspto.gov/web/offices/tac/doc/basic/).

What Is a Copyright?
Copyright is a form of protection provided to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly.

The copyright protects the form of expression rather than the subject matter of the writing. For example, a description of a machine could be copyrighted, but this would only prevent others from copying the

description; it would not prevent others from writing a description of their own or from making and using the machine. Copyrights are registered by the Copyright Office of the Library of Congress.

Patent Laws

The Constitution of the United States gives Congress the power to enact laws relating to patents, in Article I, section 8, which reads "Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Under this power Congress has from time to time enacted various laws relating to patents. The first patent law was enacted in 1790. The patent laws underwent a general revision which was enacted July 19, 1952, and which came into effect January 1, 1953. It is codified in Title 35, United States Code. Additionally, on November 29, 1999, Congress enacted the American Inventors Protection Act of 1999 (AIPA), which further revised the patent laws. See Public Law 106-113, 113 Stat. 1501 (1999).

The patent law specifies the subject matter for which a patent may be obtained and the conditions for patentability. The law establishes the United States Patent and Trademark Office to administer the law relating to the granting of patents and contains various other provisions relating to patents.

What Can Be Patented

The patent law specifies the general field of subject matter that can be patented and the conditions under which a patent may be obtained.

In the language of the statute, any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent," subject to the conditions and requirements of the law. The word "process" is defined by law as a process, act or method, and primarily includes industrial or technical processes. The term "machine" used in the statute needs no explanation. The term "manufacture" refers to articles that are made, and includes all manufactured articles. The term "composition of matter" relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything that is made by man and the processes for making the products.

The Atomic Energy Act of 1954 excludes the patenting of inventions useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon 42 U.S.C. 2181 (a).

The patent law specifies that the subject matter must be "useful." The term "useful" in this connection refers to the condition that the subject matter has a useful purpose and also includes operativeness, that is, a machine which will not operate to perform the intended purpose would not be called useful, and therefore would not be granted a patent.

Interpretations of the statute by the courts have defined the limits of the field of subject matter that can be patented, thus it has been held that the laws of nature, physical phenomena, and abstract ideas are not patentable subject matter.

A patent cannot be obtained upon a mere idea or suggestion. The patent is granted upon the new machine, manufacture, etc., as has been said, and not upon the idea or suggestion of the new machine. A complete description of the actual machine or other subject matter for which a patent is sought is required.

Novelty And Non-Obviousness, Conditions For Obtaining A Patent

In order for an invention to be patentable it must be new as defined in the patent law, which provides that an invention cannot be patented if: "(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent," or "(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the application for patent in the United States . . ."

If the invention has been described in a printed publication anywhere in the world, or if it was known or used by others in this country before the date that the applicant made his/her invention, a patent cannot be obtained. If the invention has been described in a printed publication anywhere, or has been in public use or on sale in this country more than one year before the date on which an application for patent is filed in this country, a patent cannot be obtained. In this connection it is immaterial when the invention was made, or whether the printed publication or public use was by the inventor himself/herself or by someone else. If the inventor describes the invention in a printed publication or uses the invention publicly, or places it on sale, he/she must apply for a patent before one year has gone by, otherwise any right to a patent will be lost. The inventor must file on the date of public use or disclosure, however, in order to preserve patent rights in many foreign countries.

Even if the subject matter sought to be patented is not exactly shown by the prior art, and involves one or more differences over the most nearly similar thing already known, a patent may still be refused if the differences would be obvious. The subject matter sought to be patented must be sufficiently different from what has been used or described before that it may be said to be nonobvious to a person having ordinary skill in the area of technology related to the invention. For example, the substitution of one color for another, or changes in size, are ordinarily not patentable.

Provisional Application for a Patent

Since June 8, 1995, the USPTO has offered inventors the option of filing a provisional application for patent which was designed to provide a lower cost first patent filing in the United States and to give U.S. applicants parity with foreign applicants. Claims and oath or declaration are NOT required for a provisional application. Provisional application provides the means to establish an early effective filing date in a patent application and permits the term “Patent Pending” to be applied in connection with the invention. Provisional applications may not be filed for design inventions.

The filing date of a provisional application is the date on which a written description of the invention, and drawings if necessary, are received in the USPTO. To be complete, a provisional application must also include the filing fee, and a cover sheet specifying that the application is a provisional application for patent. The applicant would then have up to 12 months to file a non-provisional application for patent as described above. The claimed subject matter in the later filed non-provisional application is entitled to the benefit of the filing date of the provisional application if it has support in the provisional application. If a provisional application is not filed in English, and a non-provisional application is filed claiming benefit to the provisional application, a translation of the provisional application will be required. See title 37, Code of Federal Regulations, Section 1.78(a)(5).

Provisional applications are NOT examined on their merits. A provisional application will become abandoned by the operation of law 12 months from its filing date. The 12-month pendency for a provisional application is not counted toward the 20-year term of a patent granted on a subsequently filed non-provisional application which claims benefit of the filing date of the provisional application.
A surcharge is required for filing the basic filing fee or the cover sheet on a date later than the filing of the provisional application.

Office Action

The applicant is notified in writing of the examiner’s decision by an Office “action” which is normally mailed to the attorney or agent of record. The reasons for any adverse action or any objection or requirement are stated in the Office action and such information or references are given as may be useful in aiding the applicant to judge the propriety of continuing the prosecution of his/her application.
If the claimed invention is not directed to patentable subject matter, the claims will be rejected. If the examiner finds that the claimed invention lacks novelty or differs only in an obvious manner from what is found in the prior art, the claims may also be rejected. It is not uncommon for some or all of the claims to be rejected on the first Office action by the examiner; relatively few applications are allowed as filed.

Allowance and Issue of Patent

If, on examination of the application, or at a later stage during the reconsideration of the application, the patent application is found to be allowable, a Notice of Allowance and Fee(s) Due will be sent to the applicant, or to applicant's attorney or agent of record, if any, and a fee for issuing the patent and if applicable, for publishing the patent application publication (see 37 CFR 1.211-1.221), is due within three months from the date of the notice. If timely payment of the fee(s) is not made, the application will be regarded as abandoned. See the current fee schedule at www.uspto.gov.

In cases where the publication of an application or the granting of a patent would be detrimental to the national security, the Comissioner of Patents will order that the invention be kept secret and shall withhold the publication of the application or the grant of the patent for such period as the national interest requires. The owner of an application which has been placed under a secrecy order has a right to appeal from the order to the Secretary of Commerce. 35 U.S.C. 181.

Nature of Patent and Patent Rights

The patent is issued in the name of the United States under the seal of the United States Patent and Trademark Office, and is either signed by the Director of the USPTO or is electronically written thereon and attested by an Office official. The patent contains a grant to the patentee, and a printed copy of the specification and drawing is annexed to the patent and forms a part of it. The grant confers "the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" and its territories and possessions for which the term of the patent shall be generally 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application under 35 U.S.C. 120, 121 or 365(c), from the date of the earliest such application was filed, and subject to the payment of maintenance fees as provided by law.

The exact nature of the right conferred must be carefully distinguished, and the key is in the words "right to exclude" in the phrase just quoted. The patent does not grant the right to make, use, offer for sale or sell or import the invention but only grants the exclusive nature of the right. Any person is ordinarily free to make, use, offer for sale or sell or import anything he/she pleases, and a grant from the government is not necessary. The patent only grants the right to exclude others from making, using, offering for sale or selling or importing the invention. Since the patent does not grant the right to make, use, offer for sale, or sell, or import the invention, the patentee's own right to do so is dependent upon the rights of others and whatever general laws might be applicable. A patentee, merely because he/she has received a patent for an invention, is not thereby authorized to make, use, offer for sale, or sell, or import the invention if doing so would violate any law. An inventor of a new automobile who has obtained a patent thereon would not be entitled to use the patented automobile in violation of the laws of a state requiring a license, nor may a patentee sell an article, the sale of which may be forbidden by a law, merely because a patent has been obtained.
Neither may a patentee make, use, offer for sale, or sell, or import his/her own invention if doing so would infringe the prior rights of others. A patentee may not violate the federal antitrust laws, such as by resale price agreements or entering into combination in restraints of trade, or the pure food and drug laws, by virtue of having a patent. Ordinarily there is nothing that prohibits a patentee from making, using, offering for sale, or selling, or importing his/her own invention, unless he/she thereby infringes another's patent which is still in force. For example, a patent for an improvement of an original device already patented would be subject to the patent on the device.

The term of the patent shall be generally 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application under 35 U.S.C. 120, 121 or 365(c), from the date of the earliest such application was filed, and subject to the payment of maintenance fees as provided by law. A maintenance fee is due 3 1/2, 7 1/2 and 11 1/2 years after the original grant for all patents issuing from the applications filed on and after December 12, 1980. The maintenance fee must be paid at the stipulated times to maintain the patent in force. After the patent has expired anyone may make, use, offer for sale, or sell or import the invention without permission of the patentee, provided that matter covered by other unexpired patents is not used. The terms may be

extended for certain pharmaceuticals and for certain circumstances as provided by law.

Assignments and Licenses

A patent is personal property and may be sold to others or mortgaged; it may be bequeathed by a will; and it may pass to the heirs of a deceased patentee. The patent law provides for the transfer or sale of a patent, or of an application for patent, by an instrument in writing. Such an instrument is referred to as an assignment and may transfer the entire interest in the patent. The assignee, when the patent is assigned to him or her, becomes the owner of the patent and has the same rights that the original patentee had.

The statute also provides for the assignment of a part interest, that is, a half interest, a fourth interest, etc., in a patent. There may also be a grant that conveys the same character of interest as an assignment but only for a particularly specified part of the United States. A mortgage of patent property passes ownership thereof to the mortgagee or lender until the mortgage has been satisfied and a retransfer from the mortgagee back to the mortgagor, the borrower, is made. A conditional assignment also passes ownership of the patent and is regarded as absolute until canceled by the parties or by the decree of a competent court.

Infringement of Patents

Infringement of a patent consists of the unauthorized making, using, offering for sale, or selling any patented invention within the United States or U.S. Territories, or importing into the United States of any patented invention during the term of the patent. If a patent is infringed, the patentee may sue for relief in the appropriate federal court. The patentee may ask the court for an injunction to prevent the continuation of the infringement and may also ask the court for an award of damages because of the infringement. In such an infringement suit, the defendant may raise the question of the validity of the patent, which is then decided by the court. The defendant may also aver that what is being done does not constitute infringement. Infringement is determined primarily by the language of the claims of the patent and, if what the defendant is making does not fall within the language of any of the claims of the patent, there is no literal infringement.

Suits for infringement of patents follow the rules of procedure of the federal courts. From the decision of the district court, there is an appeal to the Court of Appeals for the Federal Circuit. The Supreme Court may thereafter take a case by writ of certiorari. If the United States Government infringes a patent, the patentee has a remedy for damages in the United States Court of Federal Claims. The government may use any patented invention without permission of the patentee, but the patentee is entitled to obtain compensation for the use by or for the government. The Office has no jurisdiction over questions relating to infringement of patents. In examining applications for patent, no determination is made as to whether the invention sought to be patented infringes any prior patent. An improvement invention may be patentable, but it might infringe a prior unexpired patent for the invention improved upon, if there is one.

Design Patents

The patent laws provide for the granting of design patents to any person who has invented any new and nonobvious ornamental design for an article of manufacture. The design patent protects only the appearance of an article, but not its structural or functional features. The proceedings relating to granting of design patents are the same as those relating to other patents with a few differences. See current fee schedule for the filing fee for a design application. A design patent has a term of 14 years from grant, and no fees are necessary to maintain a design patent in force. If on examination it is determined that an applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant or applicant’s attorney, or agent, calling for the payment of an issue fee. The drawing of the design patent conforms to the same rules as other drawings, but no reference characters are allowed and the drawing should clearly depict the appearance, since the drawing defines the scope of patent protection. The specification of a design application is short and ordinarily follows a set form. Only one claim is permitted, following a set form that refers to the drawing(s).

Plant Patents

The law also provides for the granting of a patent to anyone who has invented or discovered and asexually reproduced any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber-propagated plant or a plant found in an uncultivated state.

Asexually propagated plants are those that are reproduced by means other than from seeds, such as by the rooting of cuttings, by layering, budding, grafting, inarching, etc.

A plant patent is granted on the entire plant. It therefore follows that only one claim is necessary and only one is permitted.

The oath or declaration required of the applicant in addition to the statements required for other applications must include the statement that the applicant has asexually reproduced the new plant variety. If the plant is a newly found plant, the oath or declaration must also state that the plant was found in a cultivated area.