
PATENT INFORMATION

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What is a Patent?

A patent is the exclusive right to make, use or sell an invention. A patent is granted by the government to an inventor, or someone who gets the right to an invention from the inventor. In return for getting the exclusive right, the inventor reveals details of the invention to the public.

What can a Patent protect?

A patent protects functional or utilitarian aspects of an apparatus (e.g. machines, tools, some computer programs), a process (e.g. pulp making, food processing) or a composition of matter (e.g. insecticides, drugs, concrete).

What is the difference between Patents, Copyright, and Trademarks?

Copyright protects such things as literary, musical and dramatic works and computer programs. It protects the way in which such works are expressed and not their substance or the idea behind them as patents do.

Trademarks are words or designs used by one business to distinguish its goods or services from those of competitors.

Another type of protection is called an “Industrial Design” in Canada. This is protection for the shape or appearance of a manufactured article.

What makes an invention patentable?

If an invention comes within one of the patentable categories, it is patentable only if it is new. An invention is not new, for example, if it is found in an earlier patent of any country, even an expired patent.

Also, whatever is new about the invention must show a certain level of inventiveness. The new feature must not be within the normal capabilities of someone skilled in the particular area of technology.

How do you find out if an invention is new?

In theory all prior patents and other publications should be checked but this is not practical. We recommend a search through earlier United States patents because such searches are reasonably reliable and economical. Our charges include providing initial advice on the patentability of the invention before the search, properly instructing the searcher and providing the search results.

Is there a deadline for filing a Patent Application?

In many countries, a patent application must be filed before the invention is made public anywhere in any manner. However, most countries (not including Taiwan) belong to the International Convention which requires filing in one country only before the invention is made public, provided applications are filed in other countries within a year.

Both Canada and the United States permit applications to be filed up to one year after making the invention public in certain circumstances. This is separate from the International Convention.

Who gets the Patent if two people apply for a Patent on the same invention?

In most countries, the first true inventor to file an application is entitled to the patent.

What is a Patent Application?

A patent application is not a form, but rather is a detailed technical description of the invention, usually including drawings. The most important part of the patent application is the set of numbered paragraphs at the end called “claims”. Claims are said to “fence off” an area of protection, because a patent is infringed only if an infringer does something within the description given in one or more claims.

Does it matter how a Patent Application is worded?

The protection given by a patent depends on the wording of the application as originally filed or as later amended. Unless the application is carefully worded, particularly the claims, it may be very easy for an infringer to avoid the patent. This is why the services of a registered patent agent are almost compulsory. The Patent Office does not ensure that the patent gives adequate protection.

What happens after a Patent Application is filed?

After a patent application is filed, the Patent Office sends a filing notice giving the official filing date and application number. In most countries, nothing more happens until a fee is paid to the Patent Office to examine the application. In Canada, the fee may be paid when the application is filed or within 5 years. No examination fee is required for the United States.

The Patent Office Examiner then conducts another search to see if the invention is new and meets patentability standards. In the vast majority of applications, he or she initially rejects some or all of the claims of the application. The application is usually amended and arguments presented by a patent agent to overcome the rejection. There are procedures available, such as appeals, if repeated rejections are received, but there is always a risk that a patent application will be refused.

If the Examiner is convinced that the invention is patentable, then the Patent Office issues a Notice of Allowance and the patent issues after the required fee is paid.

Are there renewal fees to pay for Patents?

In most countries, fees have to be paid to the Patent Office each year to keep both patent applications and patents in force. In Canada, the first annual fee is required two years from the date the application is filed. The maximum term of the patent is 20 years from filing the application assuming all renewal fees are paid.

In the United States, renewal fees must be paid 3 times after the patent is issued. The maximum term of the patent is 20 years from filing if all the renewals are paid.

What do I need to do to start the Patent process?

Send us a written description of the invention including drawings if available. Point out what you think is new about the invention. You may also phone and make an appointment to see us about the invention. Keep the invention secret until you have checked out the chances of getting a patent. We will give you an evaluation of the invention from a patent point of view, usually by indicating whether or not a patent search is justified.

Disclaimer

The information above is a considerable simplification of patent laws and procedures and is not intended to be legal advice. Consult a lawyer or a registered patent agent before deciding on any course of action. Many situations, requirements and limitations are not discussed.

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Norman holds a Bachelor of Engineering degree in Mechanical Engineering, and is a Member of the Bar of British Columbia, a registered Canadian Patent Agent, and a registered Canadian Trademark Agent. He has extensive experience through practicing many years exclusively in the area of Intellectual Property Law. He has obtained many patents in Canada, the United States and throughout the world, has obtained many trademark registrations and has wide experience in others areas of Intellectual Property Law such as technology agreements, copyright and industrial designs.

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Adrian holds a Bachelor of Science degree in Cellular, Molecular, and Microbial Biology. He is a Member of the Bar of British Columbia as well as a registered Canadian Patent Agent and registered Canadian Trademark Agent. He is well experienced in the preparation, filing and prosecution of patent and trademark applications, as well as other areas of Intellectual Property Law.

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