Patent Basics

Patent Definition: A patent is an agreement between an inventor and a country. The agreement permits the owner to exclude others from making, using or selling the claimed invention in that country.

What is a United States Patent? A patent is a grant issued by the U.S. Government giving an inventor the right to exclude others from making, using or selling his or her invention in the United States for the life of the patent. In return for this legal protection, an inventor must fully disclose their invention to the public. This system both protects inventors by giving them the opportunity to profit from their work and benefits society by allowing the public to learn about new inventions and discoveries.

Three types of U.S. Patents:

- **UTILITY PATENT**: A utility patent is granted on any new useful process, machine or composition of matter, or any new and useful improvement thereof. This type of patent protects the invention's structural or functional features. A utility patent application must describe the invention so that one skilled in the technology can make and use it. It must also include claims which define—in words—what the applicant considers to be the invention. A utility patent is awarded 20 years from the date of filing. Filing for a provisional patent first adds one more year to the life of the utility patent (see “Provisional Patent” on back of page). There are over nine million U.S. patents from 1790 to the present. A utility patent number looks like this: 8,105,326

- **DESIGN PATENT**: A design patent protects the ornamental design for or aesthetic appearance of an article of manufacture. It only protects the appearance of the invention, not its structure or utilitarian features. The design patent is valid for 14 years from the date of filing. An inventor can file for both a utility and a design patent on the same invention. A design patent number looks like this: D367,945

- **PLANT PATENT**: A plant patent is granted on any distinct and new variety of an asexually reproduced plant, including cultivated mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state. Plant patents have a term of 20 years. A plant patent number looks like this: PP218,336

Requirements for something to be patented:

- It must be **NEW & USEFUL!** It must be **UNIQUE!** It must be **UNOBSVIOUS!**
- **Full disclosure**: The inventor must fully disclose how the invention is made.
- **Date of public disclosure**: In the U.S., the patent application must meet the statutory bar, i.e. be submitted within one year after public disclosure is made regarding the invention, or within one year of the invention being sold or offered for sale.

“First to file” versus “First to invent”:

The America Invents Act (Sept 18, 2011) replaced the “first to invent” doctrine in the U.S. with the “first to file” for patent approval. “First to file” is the typical worldwide standard for patent law. The “**first to file**” took effect in the United States on September 17, 2012.
Publicly disclosing information about an invention – concerns for foreign filings:

In the U.S., an inventor has one year from the day he or she first publicly discloses or sells the invention to file a patent application. This grace period, however, is not available in all countries and inventors should exercise care before disclosing their invention to avoid forfeiting patent rights in countries without a one-year grace period.

What is a Provisional Patent application?

For a $130 (small entity) or $65 (micro-entity) fee, an inventor can file a provisional patent application. This filing essentially "buys" the inventor one year in which to complete the patent paperwork. However, the description of the invention and drawings must be stated in the provisional application. Doing this:

- Allows the use of the phrase "Patent Pending on a manufactured item;"
- Allows for the early registration filing date. An inventor has one year from the date of filing a provisional application to file a non-provisional, or full patent application. If a non-provisional application is not filed in the 1-year timeframe, the inventor loses the benefit of the early file date.
- But, note: Foreign patent applications do not have the "one year" grace period. Rather, a patent application must be filed before any enabling disclosure of the invention is made public. If an inventor plans to file in another country, s/he should avoid the provisional patent.

Who is the owner of the patent?

The inventor(s) or "patentee" owns the patent, if working outside his/her employment. Or, anyone the inventor assigns the patent rights to (known as the "assignee"). Usually, the company owns any invention made by an employee within the scope of employment, unless there is some expressed agreement to the contrary.

What is a Non-Disclosure or Confidentiality Agreement?

A non-disclosure document is extremely important in protecting an idea or invention, and can allow the inventor the time needed to develop the product. It is a simple statement that an inventor should have signed by anyone to whom he or she shows their invention. It states that they have seen your invention and agree not to tell anyone else about it. It can also state that a company you present your invention to agrees not to manufacture or use the invention for their own purposes, sometimes for a set period of years.

What is "Prior Art"?

Prior art is what was previously known in a given area of technology that led to the development of an invention. Frequently the term is used in conjunction with patent searching, i.e. the need to search the "prior art" or the patent literature.

Can I search patents myself?


Need more help? For research assistance with patents or patent searching, contact: Nan Myers, Librarian for Patents & Trademarks, Wichita State University Libraries; 316-978-5130. nan.myers@wichita.edu. Online at: http://libresources.wichita.edu/content.php?hs=a&pid=491982
You can also contact the Inventor Assistance Center at the USPTO at 800-PTO-9199 or 571-272-1000.