

Patents

What do they protect?

Patents are intended to protect products and processes that possess new functional or technical aspects. Patents are therefore concerned with how things work, rather than how they look – purely aesthetic creations are more properly protected by design rights. A granted patent allows the patentee to prevent others from using or exploiting their invention for a set period of time (usually 20 years, subject to payment of renewal fees). In return, the applicant must provide full details of the invention, which will be published by the patent office, so that after expiry of the patent the invention is free for all to use.

In order to be patented, inventions must:

- Be new;
- Involve an inventive step (i.e. be non-obvious); and
- Be capable of industrial application (i.e. not be merely of artistic or scientific value).

The threshold for 'new' is absolute. This means that any disclosure, however it is made, which takes place before the filing of your patent application will be 'prior art', meaning that a patent examiner can take it into account when assessing whether your invention is new. 'Prior art' includes not only earlier patent documents, but all forms of disclosure including presentations, articles, demonstrations, sales and use, which have taken place anywhere in the world before the filing of your patent application. Your own disclosures will also be 'prior art' and therefore **it is fundamental that your invention be kept confidential until your patent application has been filed**. If you must disclose your invention before then, ensure that a confidentiality agreement/non-disclosure agreement (NDA) is in place.

Examples of patentable subject-matter include:

- Machines (something with moving parts or circuitry)
- Manufactured articles such as tools;
- Processes or methods;
- Compositions (such as new pharmaceuticals or formulations).

How do I get a patent?

- The first step is often to conduct a thorough search of the 'prior art' to see if the invention truly is new. Just because a product is not on the market, does not mean that it is new.
- File a patent application. Patent applications are made up of a written description, 'claims' and an abstract, and may be accompanied by technical drawings. Patent specifications are complex legal documents, and the UK Intellectual Property Office (UKIPO) recommends that a patent attorney is employed to draft these.
- If you wish to apply for patents abroad, any foreign applications must be made within 12 months of your initial patent filing. These foreign applications will then benefit from the filing date of your initial patent filing, meaning that prior art will be judged based on the initial filing date (and anything disclosed in the intervening 12 months will not count against you).
- As patents are territorial, they will only be effective in those countries where patent protection has been obtained. The PCT (Patent Cooperation Treaty) is a central application procedure which can be used to pursue protection in multiple jurisdictions.
- While procedures vary depending on the territory in which you are pursuing protection, generally you will receive a search report detailing 'prior art' the examiner considers relevant to your invention, followed by an examination report, in which the Examiner sets out any objections to your application, either in view of this prior art, or otherwise. During examination you will typically have the opportunity to amend your application, in response to these objections. This often results in the narrowing of the scope of protection you pursue.
- Once granted, your application may be open to a period of opposition (depending on the territory).
- Renewal fees are payable to keep your patent in force for up to 20 years.

Ownership

Usually, patent rights are held by the inventor, however this may pass to the employer if the invention was created by an employee during the normal course of their employment. If you have collaborated with any individual, company or institution during the development of your invention then it is important to outline the terms of the collaboration, including who owns the intellectual property. A patent attorney or IP solicitor can advise on this. As intellectual 'property', patents or patent applications can be licensed, assigned or mortgaged.

Patent Pending

Once a patent application has been filed, the wording "patent pending" may be used on any products or services in connection with the invention. This can act as a deterrent to third parties and puts them on notice of your rights.