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Patents

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

What kind of protection does a patent offer?

In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

Is a patent valid in every country?

Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region.

How long does a patent last?

The protection is granted for a limited period, generally 20 years from the filing date of the application.

Why are patents useful (to society, business, individuals etc.)?

Patented inventions have, in fact, pervaded every aspect of human life, from electric lighting (patents held by Edison and Swan) and plastic (patents held by Baekeland), to ballpoint pens (patents held by Biro), and microprocessors (patents held by Intel, for example).

Patents provide incentives to and protection for individuals by offering them recognition for their creativity and the possibility of material reward for their inventions. At the same time, the obligatory publication of patents and patent applications facilitates the mutually-beneficial spread of new knowledge and accelerates innovation activities by, for example, avoiding the necessity to “re-invent the wheel”.

Once knowledge is publicly available, by its nature, it can be used simultaneously by an unlimited number of persons. While this is, without doubt, perfectly acceptable for public

information, it causes a dilemma for the commercialization of technical knowledge. In the absence of protection of such knowledge, "free-riders" could easily use technical knowledge embedded in inventions without any recognition of the creativity of the inventor or contribution to the investments made by the inventor. As a consequence, inventors would naturally be discouraged to bring new inventions to the market, and tend to keep their commercially valuable inventions secret. A patent system intends to correct such under-provision of innovative activities by providing innovators with limited exclusive rights, thereby giving the innovators the possibility to receive appropriate returns on their innovative activities.

In a wider sense, the public disclosure of the technical knowledge in the patent, and the exclusive right granted by the patent, provide incentives for competitors to search for alternative solutions and to "invent around" the first invention. These incentives and the dissemination of knowledge about new inventions encourage further innovation, which assures that the quality of human life and the well-being of society is continuously enhanced.

What happens if I don't patent my inventions?

If you don't patent your invention, competitors may well take advantage of it. If the product is successful, many other competitor firms will be tempted to make the same product by using your invention without needing to ask for your permission. Larger enterprises may take advantage of economies of scale to produce the product more cheaply and compete at a more favorable market price. This may considerably reduce your company's market share for that product. Even small competing enterprises may be able to produce the same product, and often sell it at a lower price as they would not have to recoup the original research and development costs incurred by your company.

But that's not all. The possibilities to license, sell or transfer technology will be severely hindered if you don't patent your invention; indeed, without intellectual property (patent) rights, transfers of technology would be difficult if not impossible. The transfer of technology assumes that one or more parties have legal ownership of a technology and this can only be effectively obtained through appropriate intellectual property (IP) protection. Without IP protection for the technology in question, all sides tend to be suspicious of disclosing their inventions during technology transfer talks, fearing that the other side may "run away with the invention".

Finally, you have to consider the possibility that someone else may patent your invention first. The first person or enterprise to file a patent for an invention will have the right to the patent. This may in fact mean that, if you do not patent your inventions or inventions made the employees of your company, somebody else – who may have developed the same or an equivalent invention later – may do so. Thus they could legitimately exclude your enterprise from the market, limit your activities to the continuation of prior use (where the patent legislation provides for such an exception), or ask your company to pay a licensing fee for using the invention.

However, to ensure that no one is able to patent your invention, instead of filing a patent application, you may disclose the invention to the public so that it becomes prior art for any patent application that will be filed after your publication, thereby placing it in the public domain (commonly known as defensive publication). Because of the existence of such prior art, later filed patent applications containing the same or similar invention will be refused by a patent office on the grounds of the lack of novelty or inventive step. At the same time, if you disclose your invention before filing a patent application, you will severely limit your possibility of obtaining patent protection on that invention.

How can patents be obtained worldwide?

At present, you cannot obtain a universal “world patent” or “international patent”. Patents are territorial rights. In general, an application for a patent must be filed, and the patent granted and enforced, in each country in which you seek patent protection for your invention, in accordance with the law of that country. Therefore, one way of obtaining patents in a number of countries is to file a national patent application with each relevant national patent office.

In some regions, a regional patent office, for example, the European Patent Office (EPO) and the African Regional Intellectual Property Organization (ARIPO), accepts regional patent applications, or grants patents. These have the same effect as applications filed, or patents granted, in the member states of that region. This means that, in certain regions, you can obtain a regional patent from a regional patent office, which is valid in some or all of its member states.

If you are seeking patent protection in a number of countries worldwide, a good option is to file an international application under the Patent Cooperation Treaty (PCT), administered by WIPO. Any resident or national of a state party to the PCT (contracting state) can file a single international application which has the effect of a national patent application (and certain regional patent applications) in some or all PCT contracting states. In some cases, this can be a more straightforward choice than choosing to try to submit individual applications in each and every country in which you require protection

Can the decision to grant a patent be challenged?

The grant of a patent can be challenged either via a patent office or in a court of law. A court may invalidate or revoke a patent upon a successful challenge by a third party. In addition, many patent offices provide administrative procedures that allow third parties to oppose to the grant of a patent (including so-called "opposition systems"), for example, on the basis that the claimed invention is not new or does not involve an inventive step.