The FindLaw Guide to How to File a Patent

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A patent is a right granted to an inventor by the federal government that permits the inventor to exclude others from making, selling or using the invention for a period of time. The patent process can be complicated and in this guide, you will learn about topics like patent eligibility, the basic process to file a patent, and different types of patents.

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Introduction

The patent application process can be very complicated. Not every invention receives a patent, and different types of inventions may qualify for different types of patents. You should work with an experienced patent attorney throughout the process, and FindLaw and its directory of attorneys are here to help.

Should You Obtain a Patent?

Now that you have created an invention you should determine if filing for a patent is something you want to do.

First, you should know that you may not be able to patent your invention if a patent already exists for the product or a very similar product. You should conduct a patent search to see if a patent already exists.

If a patent does not exist, you should think about whether your idea has the potential to be profitable. Obtaining a patent can be very expensive, and the marketing and production of a new product has high costs as well. So you should consider whether your product has the potential to make money and recoup these costs before beginning the patent application process.

Finally, you should consider the downsides of filing a patent. Once you obtain a patent, others will be free to examine your product and potentially copy or improve it. It can be very expensive to litigate patent infringement lawsuits and enforce your patent rights.

Is Your Invention Patentable?

Generally, determining whether your invention is patentable depends upon five factors:

- The invention must cover a subject matter that Congress has defined as patentable. These include any "new and useful" processes, machines, and manufacture or composition of matter.
- The invention must have a "utility" meaning that it is useful. This applies only for utility patents.
- The invention must be "novel" so you cannot patent an already existing or very similar invention.
- The invention must be "non-obvious" meaning its use or function can't be something that is simply the next logical step of an already patented invention.
- The invention must not have been "disclosed" to the public prior to the application for the patent. For example, if you've written an article describing the invention before you apply for the patent, the USPTO may deny the application because you've already disclosed the invention to the public.

You can read more about patent eligibility and FAQs regarding patent eligibility.

What are the different types of patents?

When you are ready to file for a patent you should know there are three general categories of patents: utility patents, design patents, and plant patents.

Utility patents are the most popular type of patent and cover things like computer software, engineering methods, machines, anything that is manufactured,
pharmaceuticals, and chemical compounds. A utility patent is the most powerful form of protection; however, it is also the most difficult to attain. They typically last 20 years from the date of filing.

Design patents protect non-functional, purely ornamental designs. Design patents are more easily issued, but last only 14 years and offer limited protection. For example, another design has to have a virtually identical design to infringe upon a patented design.

Plant patents protect asexually reproduced plants and sexually reproduced plant seeds. These typically arise from scientific experiments and are relatively rare.

What is the basic process of receiving a patent?

Think of the patent process as moving through three doors. The first is the largest door and the easiest to go through, the second is a smaller door that's more difficult, and the third is a tiny door that is extremely difficult to squeeze through.

In this analogy, door #1 is having patentable subject matter; door #2 is novelty (or "newness" of the invention); and door #3 is "non-obviousness" (whether the invention is enough of a departure from previously awarded patents). If your invention can fit through each door, the patent will be granted.

To get a patent, you must file an application with the U.S. Patent and Trademark Office. A patent application is a complex legal document, best prepared by one trained to prepare such documents. Application documents can include a specification or a written description of the invention, claims identifying the scope of protection the patent will receive, and drawings if necessary to explain the invention. Learn more about the application process here.

Should I Talk to an Attorney?

The patent application process is complicated and we recommend that you work with an experienced patent attorney throughout the process. Even if you are only considering a patent, an attorney can help you determining eligibility and whether it is worth-while to pursue a patent.

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