

Fundamentals of Patent Law



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What is a Patent?

A patent is a government granted right for a fixed time period to exclude others from making, selling, using, and importing an invention, product, process or design, or improvements on such items. These exclusive, monopoly rights are powerful, and in return the inventor is required to describe the invention in writing. The end result is simply a written description, accompanied by diagrams and drawings, that explains the invention. The public benefits because anyone can read the details of the invention and improve upon it. Importantly, the patent not only allows the public to gain an understanding of the invention, but also defines its limits. Once the patent term expires (generally 20 years from the application filing date), the technology covered by the patent becomes a part of the public domain and is essentially free to use by the public.

Types of Patents

Generally, there are two main types of patents: utility patents and design patents (a third type, plant patents, is not discussed here).

- 1) **Utility Patent** - When most people think of patents, they are referring mainly to utility patents. A utility patent is a patent that covers inventions, whether it's an innovative software process, a new product that is distinct from prior art, or an improvement to a car engine. A utility patent can be granted for any new, useful, and non-obvious process or product.
- 2) **Design Patent** - A design patent covers a new and original ornamental design of a product. In other words, a design patent protects the look of a product. Examples of products protected by design patents include jewelry and watches, electronic devices, computer icons, and beverage containers. A design patent consists of numerous drawings that show a product from various angles and contains very little written description, if any.

Applying for a Patent

In the United States, only the Federal government can grant a patent. To apply for a United States patent, an applicant must file a patent application with the United States Patent and Trademark Office (USPTO). The USPTO will assign a patent examiner—generally, a USPTO employee with a science or engineering undergraduate degree—to examine the patent application. The patent examiner has several tasks, including ensuring the application abides by the patent laws and determining whether the disclosed invention is indeed new and non-obvious.

It is important to note that a patent granted in the U.S. gives a patent owner rights within the U.S. only. For patent protection in a country other than the U.S., an inventor is required to file a patent application in that country and abide by its patent laws.

Fortunately, the Patent Cooperation Treaty—signed by 140 countries, including the United States—allows for a streamlined process by allowing an applicant to file a single application (called a PCT application) and decide at a later date which countries to pursue patent protection. A PCT application, however, does not ever become a patent; rather, it consolidates some up-front costs and delays the decision to choose the countries in which to file.

About the Author

Dev Batta is a Senior Associate and admitted to practice law in California, Virginia, and in front of the United States Patent and Trademark Office (USPTO). Mr. Batta has over 10 years of experience as an intellectual property and technology lawyer. Prior to joining Avasant, he worked for several large law firms, including Cooley and Locke Lord. Mr. Batta has successfully prosecuted over 100 patent applications in technologies ranging from driverless vehicles, E-commerce, drones, content delivery, and Internet advertising. He also represents both plaintiffs and defendants in patent and trademark litigations and proceedings both in Federal Court and in front of the USPTO.

About Avasant Law

Avasant Law is a law firm that includes attorneys dedicated to all aspects of technology law, including technology transactions, business process sourcing, patents, trademarks, privacy, and information security.

Avasant Law has developed an integrated offering with its management consulting firm, Avasant LLC, to deliver comprehensive client solutions. Though the businesses are separated to ensure the traditional protections of a lawyer-client relationship, clients can be sure that their transactional team consists of the best-in-class attorneys, strategists, financial experts and technology experts. The family of Avasant companies provides clients with a unique matrix of resources to solve next generation challenges.

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