Patents – frequently asked questions

Simply, patents protect inventions. Our qualified patent attorneys have put together this collection of frequently asked questions to assist you with securing patent protections for your intellectual property.

What is a patent?

Generally, a patent is directed to a product, apparatus, process or use, which embodies a technical innovation. Examples include chemical or biological products, mechanical devices, processes of manufacture and new uses of known substances. Other examples include computer algorithms or applications, user interfaces, electronic devices and telecommunication protocols.

A patent confers an exclusive right on the owner to prevent others from exploiting the invention, generally for a period up to 20 years. In return, the owner provides a full disclosure of the invention. Once a patent application is filed it is typically published after around 18 months. The application is examined to see whether it meets the legal tests for patentability prior to any patent being granted.

Why is a patent valuable?

Securing patent protection for an invention has numerous advantages. A patent may enable you to get a market share advantage over competitors by preventing them from competing directly with a patented product/process. A patent may also serve as a business asset that supports the value of your company and can be exploited commercially. (For example, the invention may be licensed to other parties in exchange for licensing fees.) A patent may also serve as an effective marketing tool and attract investment.

What can be patented?

An invention may arise from an idea or a discovery. A patentable invention relates to the practical expression or embodiment of that idea or discovery in the form of a new product, process or use. Although the rules governing what can and cannot be patented vary from one country to another, an invention generally has to have technical character in order to be patentable. Some territories specifically exclude certain subject matter from patentability. However, most inventions with a practical application are patentable. For example, a computer programmed to run innovative software would not be excluded from patentability even though computer programs per se are unpatentable in Europe. Similarly, even though methods of therapeutic treatment are excluded in Europe, a new medical use of a drug is not.

How do I get a patent?

A patent application must include a detailed description of the invention and one or more claims. These define the scope of protection for the invention, i.e. the legal monopoly, that is being sought. Typically, patent attorneys work with the inventor to write the application, paying particular attention to the subject matter covered by the claims.

The application is filed at a patent office and the appropriate application fees paid. The application is then searched and examined by the patent office. During the search the patent office considers the subject matter covered by the claims and determines what was already known in the public domain before the filing date of the application. Using this information, the patent office then examines whether or not the application meets the legal requirements for patentability.

This examination process typically involves a number of rounds of correspondence with the patent office, during which arguments can be submitted and changes (known as amendments) made to the wording of the claims. Once the applicant and the patent office agree on the wording for the claims the application will proceed to grant.

What are the criteria for patentability?

For an invention to be patentable it must be new and must involve an inventive step over what was previously known.

What was previously known is termed "prior art". At least in Europe this is any subject matter made available to the public in any way. Thus, any non-confidential disclosure is considered prior art, including written publications of any sort, oral presentations and sales of products. To be new the invention simply has to be different from each individual prior art disclosure.

In addition, a patentable invention must also involve an inventive step. This means that the invention is non-obvious. Questions of obviousness have to be judged in context; obviousness is highly dependent upon the knowledge of those working in the technical field of the invention (termed "persons of ordinary skill"). The existence of an inventive step is more likely to be accepted where it can be shown that the invention provides some form of advantage or improvement.

When can I disclose my invention?

Any disclosure making an invention available to the public before a patent application is filed may invalidate the application. This is because in most countries such prior disclosure, even if made by the inventor or patent applicant, would be considered part of the prior art. A notable exception is the US, which operates "grace periods" under limited circumstances.

Therefore, it is usually essential that you file a patent application before any public disclosure.

Sometimes, however, it is necessary to disclose your invention to others. You may need to communicate with investors, consultants, suppliers or other outside collaborators before a patent application is filed. In these circumstances it is essential that such disclosures are made in confidence and that all parties to the disclosures understand and agree to this.

What's in a patent application?

A patent application generally consists of a request form, which provides the formal details of the applicant(s) and inventor(s), and a patent specification. The patent specification includes one or more claims, a description, and optionally drawings.

The claims provide a concise definition of the invention and define the desired scope of protection, i.e. the legal monopoly sought. The claims usually have a converging structure such that claim 1 defines the invention in the broadest possible terms, and the subsequent claims are successively narrower in scope, each incorporating additional features of the broadly defined invention of claim 1. The claims should cover modifications and variants of the invention such that competitors cannot easily circumvent a granted patent.

The specification provides a complete disclosure of the invention so as to enable the invention to be put into practice.

It is important that all the information necessary to define and practise the invention is included in the specification.

Where do I file a patent application?

A patent confers a territorial right. Therefore, if protection is required in more than one territory, a patent application must be filed in each of those territories. This may be done either through the relevant national patent offices, or through regional patent offices (such as the European Patent Office) which provide a centralised application process enabling patent protection to be obtained in multiple countries from a single application. An International application (under the Patent Cooperation Treaty) is also available, which allows designation of most territories in the world. Such an application has to be split into applications in separate territories at a later stage.

Practically speaking, most applicants make use of an international convention that allows you to file in your own country first and provides a year to file further applications elsewhere.

How much does it cost?

The cost of obtaining a granted patent varies widely depending on the area of technology and the country in which the application is being pursued. The upfront costs relate to drafting and filing the application, as well as the patent office official fees. Further costs relate to the examination process and official fees payable once the application grants. Yearly official renewal fees may also be due. Costs are normally spread over a number of years, since the examination process can take some time.

How long does it take to get a patent application granted?

Typically, it takes two to four years to obtain a granted UK patent and four to six years to obtain a granted European patent. The time-frame is dependent on the complexity of the application and industry sector. In many territories there are options to accelerate your application.

Am I free to use my invention?

It is important to note that whilst a granted patent enables the owner to prevent other parties from using the invention covered by the patent, it does not give the owner the right to exploit the invention freely. It is still necessary for the owner to consider if using their invention infringes any third party rights.

For advice on our patent services, please contact us via our enquiry form or telephone 0207 831 7929.

This article is for general awareness only and does not constitute legal or professional advice. The law may have changed since this page was first published in January 2019.