

### Patents

#### What is a patent?

According to the United States Patent and Trademark office (USPTO), "[a] patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office". The term of a utility patent is generally 20 years from the date on which it was filed, the term is 14 years for design and plant patents. Patents issued by the USPTO are only enforceable within the United States, and its territories and possessions. Under certain circumstances, patent term extensions or adjustments may be available (USPTO, 2004).

#### Rights Conferred by Obtaining a Patent

A patent grants the right to "exclude others from making, using, offering for sale, or selling" the patented invention in the United States. Once a patent is issued, it is the patentee's responsibility to enforce the patent (United States Patent Act (USPA), 1988).

#### Types of Patents

Utility patents are used for processes, machines, articles of manufacture, and compositions of matters. Design patents are for any new and original design for an article of manufacture (Legal Database, 2004). Plant patents, that are granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant, are also available.

#### What Can Be Patented?

The question "what is patentable" is a complicated one. Here is a simplified answer. In order to be patentable, an invention must pass four tests:

1. The invention must fall into one of the five "statutory classes" of things that are patentable:
  - \* processes
  - \* machines,
  - \* manufactures (that is, objects made by humans or machines),
  - \* compositions of matter, and
  - \* new uses of any of the above.
2. The invention must be "useful". One aspect of the "utility" test is that the invention cannot be a mere theoretical phenomenon.
3. The invention must be "novel", that is, it must be something that no one did before.
4. The invention must be "unobvious" to "a person having ordinary skill in the art to which said subject matter pertains". This requirement is the one on which many patentability disputes hinge (USPA, 1988) .

#### Provisional Patents Applications

Provisional patent applications allow the inventor to file without a formal patent claim. This allows the applicant to postpone the tolling of the 20 year term by 12 months, and also allows the term "Patent Pending" to be applied (About.com, 2004). A provisional patent application has a pendency period attached to it which cannot be extended. The pendency period lasts 12 months from the date the application is filed. The applicant must file a corresponding non-provisional application during the 12-month pendency period in order to benefit from the earlier filing of the provisional application (USPA, 1988).

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# Filing for a Patent

The first step in filing a patent is to prepare a written specification including a complete description and claims that serve to define the invention (USPA, 1988). The claims will set the scope of your patent protection, so word them carefully. You may file for your patent electronically using the US Patent Office's Electronic Filing System (EFS). The system may be used to submit Utility patent applications, provisional applications, and more to the USPTO via the Internet. At this time, you cannot submit Design applications via EFS. For more information on filing a non-electronic application, go to [www.uspto.gov](http://www.uspto.gov). The applicant will be required to provide a drawing of the invention where an illustration is necessary to understand the invention (Nolo Law for All, 2004).

## Contact Information for US Patent and Trademark Office

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## Patent Information Resources

- United States Patent and Trademark Office [www.uspto.gov](http://www.uspto.gov)  
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- Thompson Delphion patent [www.delphion.com](http://www.delphion.com)  
Research US and international patent applications, grants, news, and more
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Information about patent applications, creating drawings, and more
- Title 37 Code of Federal Regulations, Patents, Trademarks and Copyrights [www.uspto.gov](http://www.uspto.gov)  
Access the entire text of title 37 in pdf format at the USPTO website
- Patent Specifications in 35 USC § 112 <http://www.bitlaw.com/source/35usc/112.html>  
Read the full text of the Specifications section of the US Patent Act Title 35

## References

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