

## It's All About Me

# Got an Idea, Get a Patent!

## What Is a Patent?

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available.

The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

### Types of Patents

There are three types of patents:

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or compositions of matters, or any new useful improvement thereof;

The United States Patent And Trademark Office

Congress established the United States Patent and Trademark Office (USPTO or Office) to issue patents on behalf of the government. The Patent Office as a distinct bureau dates from the year 1802 when a separate official in the Department of State who became known as "Superintendent of Patents" was placed in charge of patents. The revision of the patent laws enacted in 1836 reorganized the Patent Office and designated the official in charge as Commissioner of Patents. The Patent Office remained in the Department of State until 1849 when it was transferred to the Department of

Interior. In 1925 it was transferred to the Department of Commerce where it is today. In 1975, the name of the Patent Office was changed to the Patent and Trademark Office.

The United States Patent and Trademark Office administers the patent laws as they relate to the granting of patents for inventions, and performs other duties relating to patents. It examines applications for patents to determine if the applicants are entitled to patents under the law and grants the patents when they are so entitled; it publishes issued patents, most patent applications filed on or after November 29, 2000, at 18 months from the earliest filing date, and various publications concerning patents; records assignments of patents; maintains a search room for the use of the public to examine issued patents and records, and supplies copies of records and other papers, and the like. Similar functions are performed with respect to the registration of trademarks. The USPTO has no jurisdiction over questions of infringement and the enforcement of patents, nor over matters relating to the promotion or utilization of patents or inventions.

### What Can Be Patented?

The patent law specifies the general field of subject matter that can be patented and the conditions under which a patent may be obtained.

In the language of the statute, any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and

useful improvement thereof, may obtain a patent," subject to the conditions and requirements of the law. The word "process" is defined by law as a process, act or method, and primarily includes industrial or technical processes. The term "machine" used in the statute needs no explanation. The term "manufacture" refers to articles that are made, and includes all manufactured articles. The term "composition of matter" relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything that is made by man and the processes for making the products.

The Atomic Energy Act of 1954 excludes the patenting of inventions useful solely in the utilization of special nuclear material or atomic energy for atomic weapons.

The patent law specifies that the subject matter must be "useful." The term "useful" in this connection refers to the condition that the subject matter has a useful purpose and also includes operativeness, that is, a machine which will not operate to perform the intended purpose would not be called useful, and therefore would not be granted a patent.

Interpretations of the statute by the courts have defined the limits of the field of subject matter that can be patented, thus it has been held that the laws of nature, physical phenomena and abstract ideas are not patentable subject matter.

*(Continued on Page 13)*



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## Patents –

(Continued from Page 12)

A patent cannot be obtained upon a mere idea or suggestion. The patent is granted upon the new machine, manufacture, etc., as has been said, and not upon the idea or suggestion of the new machine. A complete description of the actual machine or other subject matter for which a patent is sought is required.

### Who May Apply For A Patent?

According to the law, only the inventor may apply for a patent, with certain exceptions. If a person who is not the inventor should apply for a patent, the patent, if it were obtained, would be invalid. The person applying in such a case who falsely states that he/she is the inventor would also be subject to criminal penalties. If the inventor is dead, the application may be made by legal representatives, that is, the administrator or executor of the estate. If the inventor is insane, the application for patent may be made by a guardian. If an inventor refuses to apply for a patent or cannot be found, a joint inventor or, if there is no joint inven-

tor available, a person having a proprietary interest in the invention may apply on behalf of the non-signing inventor.

If two or more persons make an invention jointly, they apply for a patent as joint inventors. A person who makes only a financial contribution is not a joint inventor and cannot be joined in the application as an inventor. It is possible to correct an innocent mistake in erroneously omitting an inventor or in erroneously naming a person as an inventor.

Officers and employees of the United States Patent and Trademark Office are prohibited by law from applying for a patent or acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent.

### Non-Provisional Application for a Patent

A non-provisional application for a patent is made to the Commissioner for Patents and includes:

- (1) A written document which comprises a specification (description and claims), and an oath or declaration;
- (2) A drawing in those cases in which a drawing is necessary; and
- (3) The filing fee. Applicant must determine that small entity status is appropri-

ate before making an assertion of entitlement to small entity status and paying a small entity fee. Fees change each October. The fee schedule is posted on the USPTO Web site.

All application papers must be in the English language or a translation into the English language will be required along with the required fee set forth in 37 CFR 1.17(i). All application papers must be legibly written on only one side either by a typewriter or mechanical printer in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable and white paper.

The papers must be presented in a form having sufficient clarity and contrast between the paper and the writing to

### Attorneys and Agents

The preparation of an application for patent and the conducting of the proceedings in the United States Patent and Trademark Office (USPTO or Office) to obtain the patent is an undertaking requiring the knowledge of patent law and rules and Office practice and procedures, as well as knowledge of the scientific or technical matters involved in the particular invention.

(Continued on Page 15)

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## Patents—

(Continued from Page 13)

Inventors may prepare their own applications and file them in the USPTO and conduct the proceedings themselves, but unless they are familiar with these matters or study them in detail, they may get into considerable difficulty. While a patent may be obtained in many cases by persons not skilled in this work, there would be no assurance that the patent obtained would adequately protect the particular invention.

Most inventors employ the services of registered patent attorneys or patent agents. The law gives the USPTO the power to make rules and regulations governing conduct and the recognition of patent attorneys and agents to practice before the USPTO. Persons who are not recognized by the USPTO for this practice are not permitted by law to represent inventors before the USPTO. The USPTO maintains a register of attorneys and agents. To be admitted to this register, a person must comply with the regulations

prescribed by the Office, which require a showing that the person is of good moral character and of good repute and that he/she has the legal, and scientific and technical qualifications necessary to render applicants for patents a valuable service. Certain of these qualifications must be demonstrated by the passing of an examination. Those admitted to the examination must have a college degree in engineering or physical science or the equivalent of such a degree.

### Contact Information

The Office of Independent Inventor Programs (OIIP) was established in March 1999 in order to meet the special needs of independent inventors. The OIIP establishes new mechanisms to better disseminate information about the patent and trademark process and to foster regular communication between the USPTO and independent inventors.

A section of the USPTO's Web site is devoted to independent inventors (site is entitled "Independent Inventor Resources") and offers educational materi-

al covering all aspects of the patent and trademark process. The Web site also endeavors to educate independent inventors about fraudulent invention development and marketing firms and the scams that may affect these inventors and offers tips and warning signs on avoiding these scams. The site also publishes complaints against these firms and any responses received from them. The site further provides links to other USPTO sites, as well as links to other federal agencies.

The OIIP also offers educational and outreach programs, either alone or in conjunction with local Patent and Trademark Depository Libraries, independent inventor organizations and Small Business Development Centers. These programs cover all aspects of the patent and trademark filing and prosecution process and can be arranged for your group or organization by contacting OIIP at the number or address listed below.

*(Editor's Note: The United States patent office can be reached at 703-306-5568 or at [independentinventor@uspto.gov](mailto:independentinventor@uspto.gov).)*



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