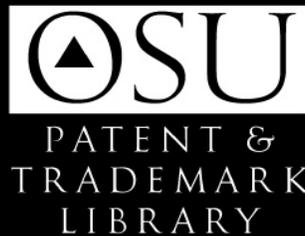


The Patent Process

(Adapted from information provided
by the U.S. Dept. of Commerce and the Patent & Trademark Office)



➔ *It takes two to four hours to conduct a preliminary patent search. Please call to make an appointment before visiting the Patent & Trademark Library (405)744-7086.*

What is a United States Patents?

A patent is a grant issued by the U.S. Government giving an inventor the right to exclude others from making, using or selling his or her invention in the United States for the life of the patent. In return for this legal protection, an inventor must fully disclose their invention to the public. This system both protects inventors by giving them the opportunity to profit from their work and benefits society by allowing the public to learn about new inventions and discoveries.

Three types of patents:

- **UTILITY PATENT:** A utility patent is granted on any new useful process, machine, or composition of matter, or any new and useful improvement thereof. This type of patent protects the invention's structural or functional features. A utility patent application must describe the invention so that one skilled in the technology can make and use it. It must also include claims which define—in words—what the applicant considers to be the invention. A utility patent is awarded for 20 years from the date of filing, except in the case of provisional patents (below).
- **DESIGN PATENT:** A design patent protects the ornamental design for an article of manufacture. It only protects the appearance of the invention, not its structure or utilitarian features.
- **PLANT PATENT:** A plant patent is granted on any distinct and new variety of an asexually reproduced plant, including cultivated mutants, hybrids, and newly found seedlings, other than a tuber-propagated plant or a plant found in an uncultivated state.

How to understand the differences

It is essential that inventors understand the differences between the types of patents, and what type of protection they provide. To understand these differences, let's take the example of a flower pot having a novel self-watering mechanism. A utility patent application would ask for protection of the structural

or functional features of the self-watering mechanism. A design patent application may be filed for the physical design or appearance of the pot. If this application were to issue as a design patent, anyone is permitted to make the same flower pot, provided it does not have the same design. In fact, such a design patent would not prevent anyone from making pots having the inventor's self-watering mechanism.

A common tactic used by unscrupulous invention development organizations is to routinely file a design patent application on behalf of the inventor, without regard to whether a design patent is the best protection for the invention. They do this because in addition to having a lower filing fee, design patents are easier and less costly to draft than a utility patent application.

The routine filing of a design patent application by an invention development organization can cause an unsuspecting inventor to end up with less valuable patent rights. As the self-watering flower pot example makes clear, a design patent would not enable an inventor to prevent others from making, using, or selling a flower pot with that self-watering mechanism, only a flower pot with the design or appearance protected by the design patent.

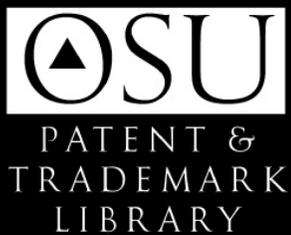
What is a disclosure document?

For a \$10 fee, an inventor can file a disclosure document that will serve as evidence of an invention's conception. The disclosure document is kept on file at the USPTO for two years. Inventors unfamiliar with the Disclosure Document Program may be misled into believing that filing this form is the equivalent to the filing of a patent application; the disclosure document affords no patent protection whatsoever.

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The Patent Process

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Publicly disclosing your document

An inventor who contacts an invention promotion firm through an “800” number is often unaware that they could forfeit valuable patent rights by publicly disclosing the details of their invention to a third party before filing a patent application. In the U.S., an inventor has one year from the day the inventor first publicly discloses or sells the invention to file a patent application. This grace period, however is not available in all countries and inventors should exercise care before disclosing their invention to avoid forfeiting patent rights in countries without a one-year grace period.

Provisional patent application

For a \$100 fee, an inventor can file a provisional patent application. As is the case with the Disclosure Document, this application provides no patent protection. It does, however, provide two benefits: 1) allows the use of the terms “Patent Pending” on a manufactured item; and 2) allows for the early registration filing date. An inventor has one year from the date of filing a provisional application to file a non-provisional, or full patent application. If a non-provisional application is not filed in the one year time frame, the inventor loses the benefit of the early file date. That is, in the case of a normal non-provisional patent, the award is for 20 years from the date of filing. If a provisional patent is applied for, and the following non-provisional application is submitted within one year, the patent is awarded for 20 years from the date of filing on the PROVISIONAL application, i.e., as much as 21 years.

How to find patent attorneys and agents

The complexity of the patent laws, regulations and formal application requirements are often misunderstood or misinterpreted by persons who are untrained and unfamiliar with the patent process. To minimize these misunderstandings inventors are strongly recommended to retain the services of a registered patent attorney or agent. A list of registered attorneys and agents is available via the USPTO Web site.

Preliminary patent search

It is strongly advised that you or your representative perform a preliminary search of patents previously granted and printed

publications to ensure that your invention has not already been patented or disclosed. A preliminary search may be performed at a patent and trademark library or the Public Search Room of the U.S. Patent and Trademark Office

You may make an appointment to learn how to perform a preliminary patent search by calling the OSU Patent and Trademark Library. The public is welcome to use the patent resources, search guidance services, and equipment available at the OSU Patent & Trademark Library. There is no fee for using the patent collection, consulting with trained staff, or conducting classification-based patent searches. However, an advance appointment is REQUIRED.

Patent & Trademark Depository Library

501 Edmon Low Library

Oklahoma State University

Stillwater, Oklahoma, 74078-1071

405-744-7086

Hours are 8 a.m.-5 p.m., Monday-Friday. Please call ahead to schedule an appointment.

What happens to an application after filing?

Applications are assigned to examiners who are experts in various fields of technology. They research previous patents and technical literature to determine whether a patent should be granted. This procedure normally takes an average of 18 months.

All patent applications are now in the public domain, unless you or your representative states in writing that you do not want your application publicly disclosed. This change is due to the American Inventors Protection Act (AIPA) of 1999. Additional information on the AIPA is available on the USPTO Web site: <www.uspto.gov/web/offices/dcom/olia/aipa/index.htm>.

Fees and maintenance

A complete list of application fees is available at the USPTO Web site. Application filing fees for a utility patent range depend on whether or not the applicant is entitled to small entity status (independent inventor, small business concern or non-profit organization), if it is filed electronically, and the number of claims. Issue fees are also required for utility patents as well as maintenance fees, due at 3 ½, 7 ½ and 11 ½ years from the date the utility patent is granted.