

How To Get a Patent

Applying for a US patent

[Patent Expert](#)

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While brilliant moments of genius often come easily in our daily lives, it is another matter entirely to convert that '*flash of genius*' into a patented invention. Unfortunately, many of us have experienced a feeling upon seeing some really nice product "*I thought of that years ago!*" - those are the great ideas for which we didn't patent. To actually go forward and get a patent takes some effort.

If you have a great idea for a new product or service, your first reaction might be to ask: "*How do I get a patent?*"

Getting a patent is probably easier than you might imagine. In most cases, you simply explain details of your idea to a patent attorney (about 1 hour) and she will prepare and file a patent application for you. A patent application is filed at the United States Patent Office and a federal employee [patent examiner](#) will review it. In about 12 months (or a little more), a patent examination report or '*Office Action*' will be issued and with the help of your patent attorney you will answer some questions or legal issues raised by the patent examiner. After a bit of negotiation, the patent office will issue a patent - a 20 year monopoly which permits you to exclude others from making, using or selling your great idea. It is that easy.

1 Great Idea

Of course, the easy part is to get a great idea. Most of us get a great idea in an instant when confronted with some interesting problem - the solution arrives as if a '*light went on*'. However, not all great ideas are patentable. In general, patentable inventions are usually either a 'machine' or 'process'. A great idea for a new movie script, or cool slogan, or funny joke, or cake recipe - is probably not patentable.

By '*machine*', we take a loose definition to include many things which are usually not technically considered a machine - such as a *golf club*, or an *envelope*, or a *shirt*. So, we sometimes also say an 'article of manufacture'. These things are patentable.

Processes which are patentable make up a very broad field indeed. Just about any process which can be described in a series of steps may be patentable. A few exceptions are steps which can be considered 'mental processes'. For example, you can't get a patent on the process 'imagine a number between 1 and 10' which is a mental process. However, if you devise some process which is executed by something other than a human mind and

it selects a number between 1 and 10, then you probably could get a patent on that process. Pure algorithms are not patentable. However, if you devise a machine which runs according to some algorithm, it probably is patentable.

Basically, the Supreme Court said '*everything under the sun made by man*' is patentable. That is a fairly large canvas indeed. So, after you get a great idea, your next step is to find a good patent attorney.

2 Finding a Patent Attorney

You must select a [good patent attorney](#), patent lawyer or [good patent agent](#) to assist you in converting your idea to a patent application. Patent applications are fairly difficult to write and often it takes years of experience for even very talented people to learn this skill. While it is permitted by law to represent yourself before the U.S. patent office, it doesn't always produce a good result. With regard to do-it-yourself patents, someone once said: "*you are likely to achieve a better result if you do your own brain surgery*".

When selecting a patent attorney to write your patent application, you should consider both price and experience.

A USPTO Registered Patent Attorney or Agent

The [United States Patent and Trademark](#) office maintains a [list of practitioners](#) certified and licensed to practice patent law. While many common attorneys feel comfortable giving advice about patents, only a registered patent attorney who is a member of the patent bar is competent to give such advice. You may easily check this register anytime to be certain the person you are talking to is registered.

Please make certain the person from which you take legal advice regarding patents is registered to practice before the USPTO. This is a necessary first step and it only takes a moment.

B Large Full Service Patent Law Firms

You could easily find a good patent attorney by contacting a large full service patent law firm in New York City and asking for a senior partner. For example, the competent patent law firms of [Jones Day](#), or [Fish Richardson](#) are well positioned to represent your patent cases. However this isn't always a preferred solution. Many times if you don't have a long standing relationship with the firm, your case will be assigned to an associate who is getting his training on your matter - while billing for both his own salary and that of the partner under which he works. In addition, you'll be paying for the fancy marble on the conference room floor as well as the 'free' donuts there. Typically, this route is better for those whose budgets are not easily dented by staggeringly high monthly bills.

C Boutique or Sole Practitioner Firms

Small patent law firms or sole practitioners often provide excellent value and at the same time quite high level of quality. However, they may be a bit more difficult to find. Careful use of Google should put you in touch with those registered patent attorneys who provide patent services without the high overhead of giant multinational law firms.

Of course, one such firm having over 20 years of experience comes highly recommend and is found at this website: [Integrity Intellectual Property](#).

D Beware of Patent Mills

While it is possible to get low fixed price quotes for patent applications, these are sometimes. It takes careful thought and concentration to choose the correct words and arrangements of words which will define your invention. 'Patent Mills' write bare minimum applications which cover the narrowest most specific particular version of an idea. This is what leads to the very common question put forth by new users of the patent system - "*can't one avoid infringing a patent by making one simple tiny little change?*".

The answer to this question is always the same, if the patent application is well prepared, it will be broad and cover many alternative versions. Small changes will not be enough to avoid patent infringement. On the other hand, if your patent writer is not careful in her selection of every word, it could be possible that someone can make one tiny change and avoid infringement. Patent mills do not take the time necessary to craft claims which are durable against small changes. They just aim for one very particular highly specific version and go for the patent on that. By the time it really matters to the invention, the patent mill is long out of the picture. Failure of the patent in an infringement contest is usually of little or no concern to the patent mill.

E Invention Promotion Companies

Invention promotion companies often tell their customers they 'will help get a patent', their 'help' may merely be a referral to a friend. Invention promotion companies are generally the surest way for inventors to lose lots of money fast. The United States Congress tries vigorously to shut these unscrupulous guys down - yet they continue to find new ways everyday of tricking naïve inventors out of their life savings. Best bet: [Stay Clear of Invention Promotion Companies](#).

1) Good Invention Development Organizations

That said, there may be at least one seemingly honest invention promotion group out there: [Lambert and Lambert](#). While we do not promote nor recommend these guys, they do at least appear on the surface as a legitimate organization trying to help inventors. Please proceed with caution.

2) Bad Invention Promotion Companies (most notorious)

You can be quite sure the following guys are up to no good:

- i) #1 Davison: Davison was fined \$26 million for defrauding inventors. [Forum Thread 1](#); [Forum Thread 2](#); [Forum Thread 3](#); [Blog #1](#); [News 1](#); [News 2](#); [Website 1](#); Federal Trade Commission - [Project Mousetrap](#); . Now if you go to Davison, you deserve what is quickly coming to you. After all, "*A fool and his money will soon be parted*".
- ii) #2 Invent Help: [Review 1](#); [Inventor Forum 1](#); [Website 1](#); [Website 2](#); [Website 3](#); [ConsumerAffairs 1](#); [Ripoff Report 1](#); Same going here. If you use InventHelp - don't say we didn't warn you.

This is not intended to be a comprehensive list. Indeed, there are many hundreds of companies who sell invention promotion services without genuine intent.

3 Disclosure Meeting

After locating a good patent attorney, a first step will be an *invention disclosure meeting*. The purpose of this meeting is for you to explain your idea in detail to your patent attorney. Patent attorneys usually charge by the hour and tend to be very expensive - so you should come well prepared and organized. You must explain your idea and its features and function. Don't waste time explaining how '*everyone will want one*' - your patent attorney doesn't care at all about marketing. Don't worry if you don't have a prototype or fancy drawings. These are usually not necessary to get a good solid invention disclosure completed. Remember, engineering details are not useful for good broad patents, but rather various alternative versions which illustrate the breadth and scope of the invention are most important.

You can provide your invention disclosure in writing if you prefer. Usually, this takes considerable amount of effort on your part, however, you will tend to think of many important things as you develop such writing. Don't worry about format - your attorney will organize everything as necessary - that's her job. Just write down everything you can think of and provide plenty of examples. You might wish to follow this [Invention Disclosure Template](#) to aid your organization.

If you are not good at writing, it may be perfectly acceptable to provide an invention disclosure via a conversation with your patent attorney. You can even make a complete disclosure by telephone or Skype. With a few well-chosen questions, your patent attorney will guide you to the answers you need to address. In many cases, you can completely describe your invention for a patent application in a one hour telephone conversation with a competent patent attorney.

4 Patent Search

It is essential for the success of a patent application that the idea be 'novel' or 'new'. That is, if an idea already exists, then one is not entitled a patent. To learn whether or not an idea is truly new, one often conducts a '*patent search*'.

But a patent search often leads to similar inventions rather than identical inventions. When one finds similar inventions, the patentability question of 'obviousness' arises rather than 'novelty'. A very careful analysis must be performed to determine whether an invention is not obvious with respect to those similar inventions found in a search.

A You can do the search yourself

The good news is most inventors will be quite effective conducting their own patent search. Because modern patent search tools are excellent, and further because an inventor has a most deep and thorough understanding of his own invention, patent searching is often best done by the inventor.

You should start with a good patent search engine. The following three are very easy to use and produce excellent results. It may take a bit of practice to learn how to write the search queries, however you should be good at it in just an hour or two of trying.

- 1) [Google Patents](#)
- 2) [Free Patents Online](#)
- 3) [USPTO](#)

You can learn more about patent searching by referring to this document: [Patent Searching](#).

If you prefer to hire the assistance of a professional patent search firm, then there are many which are happy to do this work for you at a very good price. For example, you might try selecting one from the following patent search firms:

[Patent Search International](#) - Ron Brown

5 File Patent Application

After your patent attorney writes your patent application in view of any prior art (previous inventions) found in a patent search, and you have carefully reviewed it for accuracy and have checked thoroughly that no important elements are missing, your patent attorney will file the application at the USPTO. You will be required to pay your patent attorney fees for writing the patent application and additionally pay processing fees to the patent office. Typical fees to your patent attorney will be between \$5,000 and \$10,000 (2011) for a typical patent application and an additional fee of approximately \$600 to the patent office depending upon several factors.

6 Filing Date and Serial Number

After the patent office firmly receives your application, they will issue a serial number and filing date. These are significant. You will refer to your application by these as they uniquely identify your filing. The filing date and serial number will permit anyone to discretely refer to your filing and we can be certain precisely what is disclosed on which date by considering everything in the file so identified.

7 Public PAIR

You will be able to view details of your case in the patent office via the [Patent Application Information Retrieval](#) (PAIR) system. Check this database from time-to-time to learn of the progress of your application. You will be able to download notices and actions which pertain to your case direct from the Patent Office.

Please note that all others will have similar access to your pending patent application and most proceedings are done in public view.

8 Patent Prosecution

After a considerable amount of time, your patent application is assigned to and reviewed by a patent examiner. Usually this takes more than one year. When the patent examiner is finished, he'll issue a patentability report in the form of an office action. A patent examiner determines patentability and usually rejects claims based upon prior art. Although possible, it is to be considered rare that a patent application is allowed on the first instance. Rather, a patent application is usually rejected for various reasons and it is to the applicant and her counsel to defend the position in favor of patentability. This is usually referred to as '*patent prosecution*'.

9 Patent Grant

Upon successful conclusion of patent prosecution, some of the patent claims or modified claims will be allowed and granted as a new US patent. You will be required to pay an issue fee which is about \$1,000 (depending upon entity type status). After payment of the issue fee, the patent application will go to 'publishing' where it will be prepared for issue and publication. The patent will grant about 4 weeks after the issue fee is paid and is issued and published in the Patent Gazette on a Tuesday.

10 Patent Maintenance

After a patent is granted, it must be '*maintained*' via payment of yet additional fees to the patent office. Every 4 years for the life of the patent, you will be required to pay maintenance fees. You can learn details of these maintenance fees which vary in amount from time-to-time at the [patent office fee page](#).