PATENTS

This fact sheet is intended to provide you with general background information and is not legal advice. You should consult with an attorney before taking any of the actions or relying on any of the information discussed below.

What is a patent?
A patent for an invention is the grant of an exclusive property right to the inventor, issued by the United States Patent and Trademark Office (“USPTO”).

What protections does a patent provide/not provide?
The protections associated with the patent grant relate to “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 actual 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.

When should a patent be sought?
In general, one should apply for a patent prior to disclosing the invention to the public – either in writing, orally or through physical demonstration – and before selling or offering to sell the invention. For U.S. purposes, if one discloses the invention to the public, sell, or offer to sell the invention, one typically has within one year from such activity to file a patent application. However, in foreign countries, prior disclosure of an invention could serve as an absolute bar to obtaining a patent. In order to determine whether any disclosure might constitute a divulgation of the invention, one should consult with a licensed patent attorney.

What are the steps in obtaining a patent?
1. Confidential Disclosure to a Patent Attorney
   The inventor’s usual first step in the patent procurement process is to disclose the specifics of the invention confidentially to his or her patent attorney.
2. Patentability Search
   Legal costs associated with applying for a patent can be large, thus it is often advisable to first evaluate whether or not it is probable that a patent may issue on the proposed invention. This involves evaluating technology similar to the proposed invention to determine what, if any, scope of patent protection may be available for the invention. If an initial search reveals no prior publications that substantially disclose the proposed invention, the likelihood exists that a patent may be obtained for the invention. Note: An online, essentially free preliminary assessment can be made searching online databases of U.S. patents, which are available at Internet sites such as www.uspto.gov. It is important to note that any search may not capture all prior art publications in the public domain, and that prior art might exist that can preclude obtaining a patent not captured in the search; in other words, no search is perfect.
   The patent application has two primary sections: (1) the specification, and (2) the claims. The specification is essentially a detailed description of the invention (including drawings if necessary) which illustrates how the invention works, the usefulness of the invention, and discloses its advantages over prior art. The claims of the patent application are legally worded sentences that define the “meets and bounds” (or scope of protection) of the invention.
4. The Examination Process
   After the patent application has been filed with the USPTO, a patent examiner reviews the application in order to determine the invention’s patentability. When the examiner has made his or her initial patentability determination, the USPTO responds by sending the applicant an “Office Action” setting forth its evaluation. If the Office Action contains a rejection of the claims (which typically occurs on the first Office Action a vast majority of the time) and there exist arguable grounds for contesting the examiner’s determination, one typically files a “Response,” usually in the form of an Amendment, to overcome the rejection. After the examiner has agreed to allow the application to issue as a patent, the inventor must pay the USPTO a patent issuance fee which, in part, pays for the expenses associated with preparing the application’s contents for publication. At various stages during the life of the patent (up to 20 years from the date of filing), the inventor must pay USPTO maintenance fees in order to allow his/her patent rights to continue to be in effect. The amount of the maintenance fees will increase with time under the assumption that the inventor will realize greater profits on the invention the longer that it has been in existence.

Expenses Related to Seeking Patent Protection
Below is a summary of expenses associated with seeking patent protection. These expenses are mere estimates, and the actual expenses may vary. The summary is intended to roughly

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estimate government fees as well as attorney fees for a general patent. 
Patentability Search and Opinion $300-$2,000 
Preparation, Filing and Prosecution of the Application $10,000-$30,000 
Post-issuance Fees (over the life of the patent) $3,600-$8,000

Please note that the above fees are based upon obtaining a U.S. patent and that other (often very significant) fees will typically be incurred in obtaining one or more foreign patents based on the U.S. patent.

External Resource
A portion of the USPTO’s Web site, entitled “Independent Inventor Resources, (www.uspto.gov/web/offices/com/iip) is devoted to independent inventors and offers a broad range of material covering various aspects of the patent and trademark process. Mail for the Inventor’s Assistance Program, including complaints about invention promoters, should be addressed to:
Mail Stop 24
Director of the U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
E-mail: independentinventor@uspto.gov

For additional information on the patent process, call the Inventors Assistance Center: 1-800-PTO-9199.

Note: The Patent Fact Sheet does not constitute legal advice, nor form the basis of an attorney-client relationship. The Patent Fact Sheet contains a summary of general information, and additional information may be obtained at the United States Patent and Trademark Web site, i.e., www.uspto.gov. An individual is encouraged to consult a registered patent attorney for further information or explanation, or to commence the process of obtaining a patent. This patent fact sheet does not endorse the use of invention promoters, who should be approached with extreme caution.

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