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Guide to Patents: What To Know About the U.S. Patent System (Part 1)

To first-time inventors, effectively navigating the patent system in the United States might seem like a daunting task. Often, the difficulty lies in knowing where to begin and what questions to ask. A conversation with your IP counsel – if they are good at what they do – will often reveal what questions to ask.

What is a patent?

A patent is a legal document that grants the right to exclude others from making, using, selling, or offering for sale a patented invention within the United States for the term of the patent. A U.S. patent also grants its owner(s) the right to exclude others from importing the patented invention into the United States.

A U.S. patent does not grant a right to use the patented invention. It is within the realm of possibility that a patent owner may be precluded from making, using, selling, or offering their patented invention for sale because the technology upon which it is based is covered by an earlier patent owned by another party. Such a situation may arise when a first party is issued a patent covering an improvement on a base technology, while the patent covering the base technology (issued to another party) remains in force. So under U.S. patent law, the first party is entitled to exclude the second party from making, using, selling, or offering for sale any products incorporating the improvement to the base technology, while the second party may be entitled to exclude the first party from making, using, selling, or offering for sale any products incorporating the base technology. Of course, you can ‘license’ your patented idea to another party (or obtain a license to another party’s patented invention) for some compensation (e.g., access to their portfolio, or monetary compensation).

What subject matter can be patented?

Any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement

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thereof may qualify as patentable subject matter. You may associate patents with a consumer product, which traditionally would be considered a “machine” or an “article of manufacture” for purposes of patentability. However, the process used to create a consumer product, or a material used in creating a consumer product, may also qualify for patent protection.

What types of patents are available?

The two most common forms of patents include a “utility” patent and a “design” patent. A utility patent defines an invention in terms of its structure and function. In contrast, a design patent defines an invention in terms of its ornamental appearance, rather than its function. Another form of patent is a plant patent (e.g., covering a hybridized apple).

What is the term for each type of patent?

Generally, the term of a utility patent begins on its date of issuance and ends 20 years after the filing date of the application on which the patent is based. The term of a utility patent is generally non-extendable, though some exceptions apply. The term of a design patent is 14 or 15 years (depending on how it is filed), beginning on its date of issuance. The term of a design patent is non-extendable.

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