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ADVOCATI RES MENTIS

Provisional Applications for Patent

A United States provisional application for patent is a temporary application that offers a relatively quick and less expensive way (relative to a utility patent application) to officially file an invention disclosure with the U.S. patent office. It generally provides an internationally recognized priority date, the status of "patent pending" for products of the disclosed invention, and is a place holder for up to a year for filing regular utility applications effective in up to 140 other countries.

Because their relatively informal procedural requirements are not time consuming and can be expanded upon in later utility applications, provisional applications are useful for filing ahead of an imminent public announcement or offering for sale of the invention. They are also useful for securing an early as possible filing date at a lower initial cost, and they provide a twelve month window within which to assess commercial interest, search for prior art, further develop the invention, and prepare a full utility application. As an extra benefit, the term of the provisional application does not count against the 20-year term (from date of filing) of the subsequent utility patent.

A provisional application for patent is not examined and cannot mature into a patent on its own. Rather, it must be linked by a claim of priority in a full utility application filed in the United States, or in another convention country or region recognizing its priority status, filed within twelve months of the provisional filing date. Otherwise, it simply expires, unpublished and unexamined.

In addition, the contents of a provisional application must also be statutorily adequate to properly support the claims of the subsequently filed utility application. In particular, the provisional application must be sufficiently complete and well explained to enable those skilled in the field to understand and practice the invention, and it must disclose the inventor's best mode of practicing the invention. Put another way, it must contain a written description that conveys with reasonable clarity to those skilled in the field that the inventor was in possession of the claimed invention at the time of filing. No claims are required in the provisional application, but one or two are recommended to provide focus for both the author and the reader.

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The effort expended in preparing a well written provisional application should mitigate the preparation costs of the subsequent utility application, assuming the invention does not substantially change in the interim. One important caveat: the priority date afforded by the provisional application extends only to the subject matter disclosed in the provisional application. New subject matter added in the related utility application must stand on its own first date of filing.

Consult our Documents Library for more information on patents.