

Utility Patents

The technology underlying a company's competitive advantage is nothing less than a crown jewel. It should be protected.

The owner of a U.S. utility patent has the legal right to exclude others from making, importing, using, selling, and even offering to sell the claimed invention in the U.S. This right becomes active when the patent issues, may be retroactive to the date of publication, and lasts up to 20 years from the effective filing date of the utility patent application. It is a constitutionally-based right, granted by the government in return for the inventor's public disclosure of the invention.

An application for patent must satisfy the requisite statutory criteria. In particular, the invention under U.S. law must be useful, novel, and non-obvious. Most inventions submitted for patent are found to be "useful" under U.S. patent law. Novelty essentially means that the invention, as described and claimed, cannot already be publicly known or used by others in this country. Nor can the invention be patented or otherwise published anywhere in the world.

Non-obviousness is the most difficult statutory hurdle, as it tends to be a more subjective determination based on a perceived level of "ordinary skill" in the technology field of the invention and any related prior art. Patent laws of other countries have similar requirements.

The contents of a utility patent application must also pass muster. The description of the invention must 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.

Once a provisional or a utility application is filed with the U.S. Patent Office, then all specimens of the invention, drawings, specifications, marketing literature, and product information can be labeled "patent pending" to indicate that patent protection is being sought. If a patent is granted, the patent number can and should be correctly applied. Once the application fails or the patent expires, patent markings can no longer be used.

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