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Patent Basics

Patents prevent the unauthorized use by others of an inventor's patented discovery. While "mere ideas" are not patentable, patents come closer to any other form of intellectual property except trade secrecy to protect ideas. The US Supreme Court has noted three specific exclusions from patent protection -- laws of nature (e.g., gravity), natural phenomena (e.g., lightning), and abstract ideas -- with abstract nature not being easy to define. And, there are additional regulations that limit patent protection, such as, for example, the Atomic Energy Act of 1954 excludes the patenting of inventions used solely in the utilization of special nuclear material or atomic energy.

Patents filed in the United States tend to fall into four categories -- (1) provisional patents that provide inventors the option of filing a lower-cost first patent filing and that require the corresponding non-provisional patent application be filed not later than 12 months after the provisional application filing date, (2) utility patents that cover new and useful machines, compositions of matter, products, processes (including business methods and computer algorithms), or improvements, (3) plant patents that cover distinct and new varieties of plants, and (4) design patents that cover new, original and ornamental designs for articles of manufacture.

PROVISIONAL PATENTS

A provisional application is valid for 12 months from the date the provisional application is filed. The 12-month "pendency" period cannot be extended, and, therefore, an applicant who files a provisional application must file a corresponding non-provisional application for patent (non-provisional application) during the pendency period in order to benefit from the earlier filing of the provisional application. Converting a provisional application to a non-provisional application (versus filing a non-provisional application claiming the benefit of the provisional application) has a negative impact on patent term -- that is, the term of a patent issuing from a non-provisional application claiming benefit of the earlier filed provisional application will be measured from the original filing date of the provisional application.

UTILITY PATENTS

The "machine" or "product" categories of the utility patent are generally self-explanatory and tend describe goods, tools, and apparatuses including kits, such as, a kit to modify an existing product to improve the performance or another feature of the tool. Examples of "compositions of matter" include new drugs and laboratory-created life forms. "Processes" have included methods of making products and machines, methods of use, and business methods including computer algorithms. Prior cases have used words such as "useful, concrete and tangible result" to describe business methods, and on February 15, 2008, the Federal Circuit invited briefing on five cases including what standard should govern in determining whether a process is patent eligible.

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PLANT PATENTS

Plant patents include new varieties of plants such as an ornamental rose bush to vegetable and other crop plants. Plant patents are important to agricultural and ornamental plant industries as well as to scientific research.

DESIGN PATENTS

Design patents cover anything from the shape of a spoon handle to the design of a cell phone or a car to the appearance of the floor for an NBA basketball team to even icons associated with a computer program. Recently, the Federal Circuit overhauled the test for design patent infringement in the Egyptian Goddess, Inc. case.

PATENT RIGHTS

Having a patent grants the patent owner "the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" and its territories. However, the rights of the patent owner do not guarantee the right to make the patented invention because someone else could own a prior patent (previous patented invention) on a feature or portion of the invention. If so, then the patent owner is not able to practice the patented invention until the prior patent owner's patent has expired or unless the patent owner obtains consent from the prior patent owner (such as with a licensing agreement). Nevertheless, the patented invention would prevent the prior patent owner from taking advantage of any improvements. And, if no prior patents exist, then the patent owner typically is able to freely exploit and monopolize the patented invention.

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