

Patent Protection in the United States

BY: JENNIFER MAE SLONAKER

The most effective way to protect a company's new and useful ideas from being exploited by a competitor is to obtain a patent. The requirements and procedures for obtaining a patent and the scope of exclusive rights afforded by a patent vary widely from country to country. The following are some of the principles of patent protection in the United States.

Types of Patents. In the United States, there are three types of patents: utility patents, design patents, and plant patents.

Utility patents are the most common type of patent and may be obtained for any new and useful process, machine, article of manufacture, composition of matter, or any new and useful improvement thereof. A utility patent protects the structural or functional components of a product or process. Utility patents may include, for example, commercial products, computer software, business models, manufacturing methods, methods of assembling products, chemical compounds, and mechanical or physical mixtures.

Design patents may be obtained for any new, original, and ornamental design for an article of manufacture. A design patent protects the aesthetic features of an article of manufacture. For example, a patentable design may consist of surface ornamentation that is applied to a product, such as a line drawing applied to a ceiling tile, or the configuration of a product itself, such as the ornate shape of a beverage container.

Plant patents may be obtained for any asexually reproduced new and distinct variety of plant. Plant patents protect, for example, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state.

Priority. Most countries grant priority in an invention to the first inventor to file a patent

application. The United States is the only country in the world that grants priority in an invention to the first to invent. Hence, an inventor that can prove that they were the first to come up with an idea is the one who will be considered the owner of the invention.

Time Period for Filing. In most countries, in order to obtain patent protection, a patent application must be filed before any public disclosure or offer for sale of the invention. The United States, on the other hand, permits a patent application to be filed within one year of any offer for sale or public disclosure of the invention. If a patent application is not filed within this one year time period, the inventor automatically surrenders the right to obtain patent protection for the invention.

Rights Granted. A patent does not grant the right to practice or use the invention. Rather, a patent grants the right to exclude others from making, using, selling, or offering to sell the invention within the United States or importing the invention into the United States for the term of the patent. The term for utility and plant patents is 20 years from the filing date of the patent application. The term for design patents is 14 years from the date the application issues into a patent. All of the rights in the invention pass into the public domain when the term of the patent expires.

Transfer of Rights. A patent is a legal instrument that establishes a property right in an invention. Like any other property right, any or all of the rights in a patent may be sold, licensed, encumbered, assigned, transferred, or abandoned.

For more information about obtaining patent protection in the United States, please contact James Adams at (717) 399-1510; jadams@barley.com or Jennifer Mae Slonaker at (717) 399-1535; jslonaker@barley.com.