

What are patents, how do you get them and what do they cost?

Patents are basically an agreement with the government that you disclose the details of your new invention, and in return, the government will give you the right to exclude others from making, using, and selling your claimed invention for a period of years (currently 20 years from the filing date for Utility patents). A patent does not necessarily give you the right to practice your invention, only the right to exclude others.

Kinds of Patents

1. **Utility patents** may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof.

Provisional patent applications may be filed without any proscribed formalities to preserve a filing date. (See below.)

2. **Design** patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture.

3. **Plant** patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

How obtained

Utility patents are what most inventors require, and "any person who invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof may obtain a patent".

To obtain a patent you must file a patent application with the US Patent and Trademark Office. The application must follow a proscribed format and contain claims that define the invention for which rights are sought. The claims solely define the right to exclude others. See <http://www.uspto.gov/web/offices/pac/doc/general/index.html#patent>.

For Utility patents the process is something like this:

- Prepare and file the application together with the required fees.
- In several months (or years) you receive a notice (an Office Action) from the US Patent Office (PTO) that your application has been examined and that the claims are unpatentable for the enumerated reasons (which may include formality objection and statements that your claim invention is not new based on the references found by the Examiner.
- You respond by amending the claims, if appropriate and pointing out where the Examiner is mistaken and where the amended claims are not disclosed by the cited references.
- Again, after months you receive a second Office Action, (usually a Final Office Action) in which the claims are again rejected on the basis of the same or new references or that some or all of the claims are allowed or allowable if you make certain changes.

- If all the claims are rejected you can pay a fee and begin again (a Continuation application), add material to the application (a Continuation-in-Part application) and have another go. If some of the claims are allowed, but not all, you can do the same as if all were rejected or accept the allowed claims and optionally file a continuation-in-part for the non-allowed claims and any new claims that you want to include.
- In my experience you seldom get what you want in the first part through the Patent Office. If you do, your claims are probably too narrow in scope.

It is frequently desirable to first file a Provisional application. A Provisional application does not give you any rights to exclude others, has no required formalities (but, if useful, will be structured much like a regular, or non-provisional, application), is not examined and is maintained in secret. What it does do is to record a filing date that you can rely upon if you file a non-provisional application within one year of filing the Provisional. This allows you time to determine if you wish to go ahead with a regular application, as well as time to make improvements and to progress with your invention.

Costs

Costs consist of filing fees, drafting costs and attorney charges (if an attorney is used). Drafting a useful patent application and appropriate claims is very complicated, complex, and time consuming. While it appears fairly straightforward, a thorough knowledge of patent law (and the implications of what is contained in the application) requires professional help. Therefore it is recommended that an experienced patent attorney be used. (See <http://www.ipwatchdog.com/category/invention-blog/>.)

Fees

Patents– current (2008) filing fees are:

Small entity¹ : Utility patents: \$515 filing fee; \$720 issue fee.

Design patents: \$220 filing fee; \$410 issue fee.

Provisional Application: \$105 filing fee.

Attorney Fees: This can vary widely depending on which attorney is used and the complexity of the application. Generally the initial fee for a utility application will range from about \$ 5,000 to \$20,000. Additional fees will be incurred for responses to Office Actions, consultation, etc.

If drawings are required, and they always are, the costs will be in the order of \$100 per sheet (1 to 4 figures per sheet).

It is unlikely that a patent can be obtained for very much less than about \$8,000 – \$10,000. Complex patents, using high priced attorneys with extensive prosecution, can be \$50,000 - \$100,000. See <http://www.ipwatchdog.com/patent/patent-cost/>

¹ Small entity is an individual (s), small business (less than 500 employees) and non-profits (including Universities), who have not assigned to another that does not qualify as a Small Entity. If not a small entity, the fee are doubled.

Maintenance fees

You are not done yet. If you obtain a patent, fees are required to keep it in force for the life of the patent.

Small entity: After 3.5 years: \$ 465

After 7.5 years: \$1,180

After 11.5 years: \$1,955

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