**PATENT**

Patent is a form of [intellectual property](http://en.wikipedia.org/wiki/Intellectual_property). It consists of a set of [exclusive rights](http://en.wikipedia.org/wiki/Exclusive_right) granted by a [sovereign state](http://en.wikipedia.org/wiki/Sovereign_state) to an inventor or their assignee for a limited period of time, in exchange for the public disclosure of the [invention](http://en.wikipedia.org/wiki/Invention).

The procedure for granting patents, requirements placed on the patentee, and the extent of the exclusive rights vary widely between countries according to national laws and international agreements. Typically, however, a patent application must include one or more [claims](http://en.wikipedia.org/wiki/Claim_(patent)) that define the invention. These claims must meet relevant [patentability](http://en.wikipedia.org/wiki/Patentability" \o "Patentability)requirements, such as [novelty](http://en.wikipedia.org/wiki/Novelty_(patent)) and [non-obviousness](http://en.wikipedia.org/wiki/Inventive_step_and_non-obviousness). The exclusive right granted to a patentee in most countries is the right to prevent others from making, using, selling, or distributing the patented invention without permission.

Under the [World Trade Organization](http://en.wikipedia.org/wiki/World_Trade_Organization)'s (WTO) [Agreement on Trade-Related Aspects of Intellectual Property Rights](http://en.wikipedia.org/wiki/Agreement_on_Trade-Related_Aspects_of_Intellectual_Property_Rights), patents should be available in WTO member states for any invention, in all fields of technology,[]](http://en.wikipedia.org/wiki/Patent#cite_note-2) and the [term of protection](http://en.wikipedia.org/wiki/Term_of_patent) available should be a minimum of twenty years. In many countries, certain [subject areas](http://en.wikipedia.org/wiki/Patentable_subject_matter) are excluded from patents

., such as [business methods](http://en.wikipedia.org/wiki/Business_method_patent) and [computer programs](http://en.wikipedia.org/wiki/Software_patent).

**Effects**

A patent is not a right to practise or use the invention. Rather, a patent provides the[right](http://en.wikipedia.org/wiki/Right) to *exclude others* from making, using, selling, offering for sale, or importing the patented [invention](http://en.wikipedia.org/wiki/Invention) for the [term of the patent](http://en.wikipedia.org/wiki/Term_of_patent), which is usually 20 years from the filing date subject to the payment of [maintenance fees](http://en.wikipedia.org/wiki/Maintenance_fee_(patent)). A patent is, in effect, a limited property right the government gives inventors in exchange for their agreement to share details of their inventions with the public. Like any other property right, it may be sold, licensed, [mortgaged](http://en.wikipedia.org/wiki/Mortgage_law), assigned or transferred, given away, or simply abandoned.

The rights conveyed by a patent vary country-by-country. For example, in the United States, a patent covers research, except "purely philosophical" inquiry. A U.S. patent is infringed by any "making" of the invention, even a making that goes toward development of a new invention—which may itself become subject of a patent.

A patent, being an exclusionary right, does not necessarily give the patent owner the right to exploit the patent. For example, many inventions are improvements of prior inventions that may still be covered by someone else's patent. An inventor who obtains a patent on improvements to an existing, still under patent [mouse trap](http://en.wikipedia.org/wiki/Mouse_trap) design can only legally build the improved mouse trap with permission from the patent holder of the original mouse trap. The owner of the improved mouse trap patent can exclude the original patent owner from using the improvement.

Some countries have "working provisions" that require the invention be exploited in the jurisdiction it covers. Consequences of not working an invention vary from one country to another, ranging from revocation of the patent rights to the awarding of a compulsory license awarded by the courts to a party wishing to exploit a patented invention. The patentee has the opportunity to challenge the revocation or license, but is usually required to provide evidence that the reasonable requirements of the public have been met by the working of invention.

### Enforcement

Patents can generally only be enforced through [civil lawsuits](http://en.wikipedia.org/wiki/Litigation) (for example, for a U.S. patent, by an action for patent infringement in a United States federal court), although some countries (such as [France](http://en.wikipedia.org/wiki/France) and [Austria](http://en.wikipedia.org/wiki/Austria)) have criminal penalties for wanton infringement. Typically, the patent owner seeks monetary compensation for past infringement, and seeks an [injunction](http://en.wikipedia.org/wiki/Injunction) that prohibits the defendant from engaging in future acts of infringement. To prove infringement, the patent owner must establish that the accused infringer practises all the requirements of at least one of the claims of the patent. (In many jurisdictions the scope of the patent may not be limited to what is literally stated in the claims, for example due to the [*doctrine of equivalents*](http://en.wikipedia.org/wiki/Doctrine_of_equivalents)).

An important limitation on the ability of a patent owner to successfully assert the patent in civil litigation is the accused infringer's right to challenge the validity of that patent. Civil courts hearing patent cases often declare patents invalid. A patent can be found invalid on grounds described in the relevant patent legislations that vary between countries. Often, the grounds are a subset of requirements for[patentability](http://en.wikipedia.org/wiki/Patentability) in the relevant country. Although an infringer is generally free to rely on any available ground of invalidity (such as a [prior publication](http://en.wikipedia.org/wiki/Novelty_(patent)), for example), some countries have sanctions to prevent the same validity questions being relitigated. An example is the UK[Certificate of contested validity](http://en.wikipedia.org/wiki/Certificate_of_contested_validity).

Patent [licensing agreements](http://en.wikipedia.org/wiki/License) are [contracts](http://en.wikipedia.org/wiki/Contract) in which the patent owner (the licensor) agrees to forgo their right to sue the licensee for infringement of the licensor's patent rights, usually in return for a royalty or other compensation. It is common for companies engaged in complex technical fields to enter into dozens of license agreements associated with the production of a single product. Moreover, it is equally common for competitors in such fields to license patents to each other under [cross-licensing](http://en.wikipedia.org/wiki/Cross-licensing) agreements in order to share the benefits of using each other's patented inventions.

Therefore, patents may be enforced through litigation, and a common defense is an invalidity challenge. Patents may also be subject to licensing agreements. The vast majority of patents are however never litigated or even licensed.

### Ownership

In most countries, both natural persons and corporate entities may apply for a patent. In the United States, however, only the inventor(s) may apply for a patent although it may be [assigned](http://en.wikipedia.org/wiki/Assignment_(law)) to a corporate entity subsequently and inventors may be required to assign inventions to their employers under a contract of employment. In most European countries, ownership of an invention may pass from the inventor to their employer by rule of law if the invention was made in the course of the inventor's normal or specifically assigned employment duties, where an invention might reasonably be expected to result from carrying out those duties, or if the inventor had a special obligation to further the interests of the employer's company.

The inventors, their successors or their assignees become the proprietors of the patent when and if it is granted. If a patent is granted to more than one proprietor, the laws of the country in question and any agreement between the proprietors may affect the extent to which each proprietor can exploit the patent. For example, in some countries, each proprietor may freely license or assign their rights in the patent to another person while the law in other countries prohibits such actions without the permission of the other proprietor(s).

The ability to assign ownership rights increases the [liquidity](http://en.wikipedia.org/wiki/Market_liquidity) of a patent as property. Inventors can obtain patents and then sell them to third parties. The third parties then own the patents and have the same rights to prevent others from exploiting the claimed inventions, as if they had originally made the inventions themselves.

### Governing laws

The grant and enforcement of patents are governed by national laws, and also by international treaties, where those treaties have been given effect in national laws. Patents are, therefore, territorial in nature.

Commonly, a nation forms a [patent office](http://en.wikipedia.org/wiki/Patent_office) with responsibility for operating that nation's patent system, within the relevant patent laws. The patent office generally has responsibility for the grant of patents, with infringement being the remit of national courts.

There is a trend towards global harmonization of patent laws, with the [World Trade Organization](http://en.wikipedia.org/wiki/World_Trade_Organization) (WTO) being particularly active in this area. The [TRIPs Agreement](http://en.wikipedia.org/wiki/Agreement_on_Trade-Related_Aspects_of_Intellectual_Property_Rights) has been largely successful in providing a forum for nations to agree on an aligned set of patent laws. Conformity with the TRIPs agreement is a requirement of admission to the WTO and so compliance is seen by many nations as important. This has also led to many developing nations, which may historically have developed different laws to aid their development, enforcing patents laws in line with global practice.

A key international convention relating to patents is the [Paris Convention for the Protection of Industrial Property](http://en.wikipedia.org/wiki/Paris_Convention_for_the_Protection_of_Industrial_Property), initially signed in 1883. The Paris Convention sets out a range of basic rules relating to patents, and although the convention does not have direct legal effect in all national jurisdictions, the principles of the convention are incorporated into all notable current patent systems. The most significant aspect of the convention is the provision of the right to claim [priority](http://en.wikipedia.org/wiki/Priority_right): filing an application in any one member state of the Paris Convention preserves the right for one year to file in any other member state, and receive the benefit of the original filing date. Because the right to a patent is intensely date-driven, this right is fundamental to modern patent usage.

The authority for patent statutes in different countries varies. In the UK, substantive patent law is contained in the Patents Act 1977 as amended. In the United States, the [Constitution](http://en.wikipedia.org/wiki/United_States_Constitution) empowers [Congress](http://en.wikipedia.org/wiki/United_States_Congress) to make laws to "promote the Progress of Science and useful Arts..." The laws Congress passed are codified in [Title 35 of the United States Code](http://en.wikipedia.org/wiki/Title_35_of_the_United_States_Code) and created the [United States Patent and Trademark Office](http://en.wikipedia.org/wiki/United_States_Patent_and_Trademark_Office).

In addition, there are international treaty procedures, such as the procedures under the [European Patent Convention](http://en.wikipedia.org/wiki/European_Patent_Convention) (EPC) [constituting the [European Patent Organisation](http://en.wikipedia.org/wiki/European_Patent_Organisation) (EPOrg)], and the [Patent Cooperation Treaty](http://en.wikipedia.org/wiki/Patent_Cooperation_Treaty) (PCT) (administered by [WIPO](http://en.wikipedia.org/wiki/WIPO) and covering more than 140 countries), that centralize some portion of the filing and examination procedure. Similar arrangements exist among the member states of [ARIPO](http://en.wikipedia.org/wiki/African_Regional_Intellectual_Property_Organization) and [OAPI](http://en.wikipedia.org/wiki/Organisation_Africaine_de_la_Propri%C3%A9t%C3%A9_Intellectuelle), the analogous treaties among African countries, and the nine [CIS](http://en.wikipedia.org/wiki/Commonwealth_of_Independent_States) member states that have formed the[Eurasian Patent Organization](http://en.wikipedia.org/wiki/Eurasian_Patent_Organization).

### Application and prosecution

A patent is requested by filing a written [application](http://en.wikipedia.org/wiki/Patent_application) at the relevant patent office. The person or company filing the application is referred to as "the applicant". The applicant may be the inventor or its assignee. The application contains a description of how to make and use the invention that must provide [sufficient detail](http://en.wikipedia.org/wiki/Sufficiency_of_disclosure) for a person skilled in the art (i.e., the relevant area of technology) to make and use the invention. In some countries there are requirements for providing specific information such as the usefulness of the invention, the [best mode](http://en.wikipedia.org/wiki/Best_mode) of performing the invention known to the inventor, or the [technical problem](http://en.wikipedia.org/wiki/Technical_problem) or problems solved by the invention. Drawings illustrating the invention may also be provided.

The application also includes one or more claims, although it is not always a requirement to submit these when first filing the application. The claims set out what the applicant is seeking to protect in that they define what the patent owner has a right to exclude others from making, using, or selling, as the case may be. In other words, the claims define what a patent covers or the "scope of protection".

After filing, an application is often referred to as "[patent pending](http://en.wikipedia.org/wiki/Patent_pending)". While this term does not confer legal protection, and a patent cannot be enforced until granted, it serves to provide warning to potential infringers that if the patent is issued, they may be liable for damages.

For a patent to be granted, that is to take legal effect in a particular country, the patent application must meet the [patentability](http://en.wikipedia.org/wiki/Patentability" \o "Patentability)requirements of that country. Most patent offices examine the application for compliance with these requirements. If the application does not comply, objections are communicated to the applicant or their [patent agent or attorney](http://en.wikipedia.org/wiki/Patent_attorney) and one or more opportunities to respond to the objections to bring the application into compliance are usually provided.

Once granted the patent is subject in most countries to [renewal fees](http://en.wikipedia.org/wiki/Maintenance_fee_(patent)) to keep the patent in force. These fees are generally payable on a yearly basis, although the US is a notable exception. Some countries or regional patent offices (e.g. the [European Patent Office](http://en.wikipedia.org/wiki/European_Patent_Office)) also require annual renewal fees to be paid for a patent application before it is granted.

#### Costs

The costs of preparing and filing a patent application, prosecuting it until grant and maintaining the patent vary from one jurisdiction to another, and may also be dependent upon the type and complexity of the invention, and on the type of patent.

The European Patent Office estimated in 2005 that the average cost of obtaining a European patent (via a Euro-direct application, i.e. not based on a PCT application) and maintaining the patent for a 10 year term was around 32,000 Euro. Since the [London Agreement](http://en.wikipedia.org/wiki/London_Agreement_(2000)) entered into force on May 1, 2008, this estimation is however no longer up-to-date, since fewer translations are required.

In the United States, in 2000 cost of obtaining patent ([patent prosecution](http://en.wikipedia.org/wiki/Patent_prosecution)) was estimated from $10,000 to $30,000 per patent. When patent litigation is involved (which in year 1999 happened in about 1,600 cases compared to 153,000 patents issued in the same year, costs increase significantly: while 95% of patent litigation cases are settled [out of court](http://en.wikipedia.org/wiki/Out_of_court), but when the case reaches the court, direct legal costs of patent litigation are on average in the order of a million dollars per case, not including associated business costs.

### Alternatives to applying for a patent

A [defensive publication](http://en.wikipedia.org/wiki/Defensive_publication) is the act of publishing a detailed description of a new invention without patenting it, so as to establish [prior art](http://en.wikipedia.org/wiki/Prior_art) and public identification as the creator/originator of an invention, although a defensive publication can also be anonymous. A defensive publication prevents others from later being able to patent the invention.

A [trade secret](http://en.wikipedia.org/wiki/Trade_secret) is the act of not disclosing the methods by which a complex invention works or how a chemical is formulated. Trade secrets are protected by [nondisclosure agreements](http://en.wikipedia.org/wiki/Nondisclosure_agreements) and [employment law](http://en.wikipedia.org/wiki/Employment_law) that prevents [reverse engineering](http://en.wikipedia.org/wiki/Reverse_engineering) and information leaks such as [breaches of confidentiality](http://en.wikipedia.org/wiki/Breaches_of_confidentiality) and [corporate espionage](http://en.wikipedia.org/wiki/Corporate_espionage). Compared to patents, the advantages of trade secrets are that a trade secret is not limited in time (it "continues indefinitely as long as the secret is not revealed to the public", whereas a patent is only in force for a specified time, after which others may freely copy the invention), a trade secret does not imply any registration costs, has an immediate effect, does not require compliance with any formalities, and does not imply any disclosure of the invention to the public. The disadvantages of trade secrets include that "others may be able to legally discover the secret and be thereafter entitled to use it", "others may obtain patent protection for legally discovered secrets", and a trade secret is more difficult to enforce than a patent.

### Rationale

There are four primary incentives embodied in the patent system: to invent in the first place; to disclose the invention once made; to invest the sums necessary to experiment, produce and market the invention; and to [design around](http://en.wikipedia.org/wiki/Design_around) and improve upon earlier patents.

1. Patents provide incentives for economically efficient [research and development](http://en.wikipedia.org/wiki/Research_and_development) (R&D). A study conducted annually by the IPTS shows that the 2,000 largest global companies invested more than 430 billion euros in 2008 in their R&D departments. If the investments can be considered as inputs of R&D, real products and patents are the outputs. Based on these groups, a project named Corporate Invention Board, had measured and analyzed the patent portfolios to produce an original picture of their technological profiles. Supporters of patents argue that without patent protection, R&D spending would be significantly less or eliminated altogether, limiting the possibility of technological advances or breakthroughs.Corporations would be much more conservative about the R&D investments they made, as third parties would be [free to exploit](http://en.wikipedia.org/wiki/Free_rider_problem) any developments. This second justification is closely related to the basic ideas underlying traditional [property rights](http://en.wikipedia.org/wiki/Property_(ownership_right))
2. In accordance with the original definition of the term "patent," patents facilitate and encourage disclosure of [innovations](http://en.wikipedia.org/wiki/Innovation) into the[public domain](http://en.wikipedia.org/wiki/Public_domain) for the [common good](http://en.wikipedia.org/wiki/Common_good). If [inventors](http://en.wikipedia.org/wiki/Inventor) did not have the legal protection of patents, in many cases, they would prefer or tend to keep their inventions secret. Awarding patents generally makes the details of new technology publicly available, for exploitation by anyone after the patent expires, or for further improvement by other inventors. Furthermore, when a[patent's term](http://en.wikipedia.org/wiki/Term_of_patent) has expired, the public record ensures that the patentee's invention is not lost to humanity.
3. In many industries (especially those with high [fixed costs](http://en.wikipedia.org/wiki/Fixed_cost) and either low [marginal costs](http://en.wikipedia.org/wiki/Marginal_cost) or low reverse engineering costs — computer processors, and pharmaceuticals for example), once an invention exists, the cost of commercialization (testing, tooling up a factory, developing a market, etc.) is far more than the initial conception cost. (For example, the internal "rule of thumb" at several computer companies in the 1980s was that post-R&D costs were 7-to-1). Unless there is some way to prevent copies from competing at the marginal cost of production, companies don't invest in making the invention a product.

One effect of modern patent usage is that a small-time inventor can use the exclusive right status to become a licensor. This allows the inventor to accumulate capital from licensing the invention and may allow innovation to occur because he or she may choose not to manage a manufacturing buildup for the invention. Thus the inventor's time and energy can be spent on pure innovation, allowing others to concentrate on manufacturability.

Another effect of modern patent usage is to cause competitors to design around (or to "invent around" according to [R S Praveen Raj](http://en.wikipedia.org/wiki/R_S_Praveen_Raj)) each other's patents. This may promote healthy competition among manufacturers, resulting in gradual improvements of the technology base. This may help augment national economies and confer better living standards to the citizens. The 1970 Indian Patent Act allowed the Indian pharmaceutical industry to develop local technological capabilities in this industry. This act transformed India from a bulk importer of pharmaceutical drugs to a leading exporter. The rapid evolution of Indian pharmaceutical industry since the mid-1970s highlights the fact that the design of the patent act was instrumental in building local capabilities even in a poor country like India.

#### Proposed alternatives to the patent system

According to James Bessen, elimination of the patent system would increase the incentives for innovation in all industries except chemistry and pharmaceuticals by eliminating startup litigation costs.

Alternatives have been discussed to address the issue of financial incentivization to replace patents. Mostly, they are related to some form of direct or indirect government funding. One example is the idea of [providing "prize money"](http://en.wikipedia.org/wiki/Prizes_as_an_alternative_to_patents) (from a "prize fund" sponsored by the government) as a substitute for the lost profits associated with abstaining from the monopoly given by a patent. Another approach is to remove the issue of financing development from the private sphere all together, and to cover the costs with direct government funding.

Trade secrets are an existing alternative to the patent system. Given their popularity, it has been proposedto strengthen nondisclosure and employment law pertaining to trade secrets.

In order for applying and filing for a patent in Philippines you need to provide the Patent Information and send us the Assignment Agreement if required**.**

**1.- Philippines Patent Application Requirements**

 Name and address of the applicant. If it is a Company, place of incorporation.

* Name, address and citizenship of the Inventor(s).
* Invention Title, Abstract of the Invention or Design.
* Invention specifications / description.
* Claims.
* Formal Drawings.
* Inventors Declaration which does not need to be notarized.
* Certified priority document, including priority number and country of origin, accompanied by a Chinese translation. Has to be filed within 3 months (The priority could be claimed if the foreign patent application was filed within 12 months).
* Simple Power of Attorney

**Patents in Philippines**

A Philippines Patent is effective for a term of: 20 years (from the filing date)

The Utility Models and Design patents are effective for a term of: 10 years

Approximate Patent Application processing time: 3 years.

Member of the Paris Convention: Yes

Member of the PCT: Yes

Intellectual Property Office Philippines

1. Patent Filing
2. Publication: 18 months from the filing date or first priority date.
3. Examination: Requested at any time within three years from the date of filing.
4. Acceptance (Notice of Allowance) or rejection.
5. Payment of the Issue Fees.
6. The patentee shall pay an annual fee beginning with the year in which the patent right was granted.

### What is a patent?

A patent is a grant by the government of the right to stop others from making, using or selling an invention within its jurisdiction for a limited period of time. A patent is granted to protect an article that is essentially better in some way than what was made before, or for a better way of making it.

### What can be patented?

Machines, articles of manufacture, methods, (processes), compositions of matter (chemicals, cell lines), any field of human activity which is new or involves an inventive step and is industrially applicable is patentable. An invention shall not be considered new if it forms part of prior art. Special kind of patents cover the appearance of useful objects ([industrial design](http://www.skyinet.net/~vns/Patent/id.htm)) or a technical solution of a problem in any field of human activity that is new and industrially applicable ([utility model](http://www.skyinet.net/~vns/Patent/um.htm)).

### What cannot be patented?

Discoveries, naturally occurring (unaltered) scientific theories & and mathematical methods, purely mental processes, schemes, playing games, methods of doing business, programs for computers, aesthetic creations, arrangements of printed matter, plant varieties or animal breeds or essentially biological process for the production of plants & animals; inventions solely useful in making atomic weapons or anything contrary to public order or morality, and human beings cannot be patented.

### How long is a patent valid?

In the Philippines, invention patents are valid for a term of twenty (20) years from the filing date of the application. This means that the owner of the invention or process essentially has a 20-year monopoly to exclude others from making, using, selling or importing the invention in return for which the owner fully discloses the information. However, a patent shall cease to be in force and effect if any prescribed annual fee is not paid within the prescribed time or if the patent is cancelled in accordance with the provisions of the Intellectual Property Code.

However, for a [utility model](http://www.skyinet.net/~vns/Patent/um.htm), the term is seven (7) years without renewal; and for an [industrial design](http://www.skyinet.net/~vns/Patent/id.htm), the term is five (5) years plus two (2) renewals of five years each.

### Who is entitled to a patent?

The Philippines follows the first-to-file rule in the granting of patents. Essentially, this means that if two (2) or more persons have made the same invention independently of each other, the right to the patent shall belong to the person who filed for such an invention. In other words, where two or more applications are filed for the same invention, the right of the patent shall belong to the applicant who has the earliest filing date or the earliest priority date. The patent belongs to the inventor, his heir or assigns. When two or more persons have made an invention, they will own the patent proportionately (i.e. if there are two inventors, each one is entitled to one-half share). In case where an employee creates an invention during the course of his employment contract, the patent shall belong to the employee, if the inventive activity was not a part of his regular duties even though he uses the time, facilities and materials of his employer. However, if the invention is the result of the employee’s regular duties, it belongs to his employer, unless there was a prior express or implied agreement to the contrary. In the case when an invention is commissioned, the person who commissions the work shall own the patent unless otherwise stipulated in the contract.

### What are the requirements of filing a patent?

Basically, the patent application should be in English or Filipino and shall include the following:   
1. Request for a grant of patent   
2. Specifications containing the following:

a. Title of the Invention   
b. Disclosure and description of the invention   
c. Drawings necessary for the understanding of the invention   
d. A brief explanation of the drawings, if any   
e. A distinct and explicit claim or claims of the invention   
f. An abstract

3. Priority claim, if any   
4. Power of Attorney   
5. Filing fees