The Difference Between Patentable and Non Patentable

Patents

Patents are rights to stop others from stealing your ideas. Once granted, the inventor becomes the owner of the patent. When the time limit established concludes, the right to make, use, and sell your invention become available to the public. Patent holders can sell or give their ownership to others at will.

Patents are not required, but choosing not to leaves others able to replicate and sell your invention without your consent. Three types of patents are available.

- Design Patents - Protection for a unique product design.
- Plant Patents - Specifically refers to the creation of new, mutant, or hybrid plants.
- Utility Patents - Commonly used for machines, chemicals, and processes.

In the U.S., the basis of patent law is located in;

- Title 35 of the U.S. Code.
- The Patent Act of 1952.
- Title 37 of the U.S. Code.
- General Agreements on Tariffs and Trade (GATT)

Patent duration terms are marked from the 'effective filing date'. These terms can be extended up to five years in special cases.

- Originally, patent duration: 14 years.
- 1861-June 7, 1995, patent duration: 17 years.
- GATT took effect, patent duration: 20 years.

Patentable Inventions

Without exception, if an item isn't in one of these categories, it is not patentable.
A patent for improvement does not include the improved upon object.

- Process - a method of creating a physical change in a material relating to its character or quality.
- Machine - uses energy to complete a task.
- Manufacture - processes that create work.
- Composition of matter - a compound created through two or more elements.
- Improvement - new or improved element in a known invention.

The threshold requirement for patents;

- Originality - must be created by the person claiming to be the inventor.
- Enablement - ability to make and use it.
- Utility - the invention must be useful.
- Statutory subject matter - ability to be placed into one of the above-mentioned categories.

Statutory Bars state under U.S. patent law, only the first applicant on file can receive a patent. Under many foreign laws, a patent is required before publicly releasing your invention. It is generally considered best practice to file for a patent before the invention is released publicly, and a patent lawyer should be consulted as early as possible.

These criteria are helpful in determining the likelihood of a successful application. Consult with your patent lawyer for further investigation. It's the Patent Office's job to make the final determination. Public information can help you do preliminary research, including;

- Patent and Trademark Depository Libraries (PTDL)
    - Hartford Public Library (Northern Connecticut)
    - Physical Sciences Library at UMass Amherst (Western Massachusetts)
    - Boston Public Library (Massachusetts)
- Free Internet-based patent databases (use keywords describing your invention)
    - U.S. Patent Office's search website
    - European Patent Office's search website
    - Google Patents

Non Patentable Inventions

- Discovery, scientific theory, or mathematical methods
- Nonfunctioning products
- Scheme, rule or method for performing a mental task
- Informative presentations
- Medical/veterinary procedures and methods.

Perpetual motion machines aren't a proven design. Unethical/ immoral inventions and software/business methods that aren't technical are non patentable.

Difference Between Patentability Search Opinion and a Non-Infringement Opinion

- Patentability opinion - A patent lawyer provides opinion on the patentability of your invention.
- Non-infringement opinion - A patent lawyer provides opinion on the invention's infringement on other patents.

Making Sure Your Invention Is Both Patentable and Does Not Infringe Any Third Party Patent Rights

In-depth non-infringement opinion occurs if a possible infringement is detected by the lawyer.

When Can an Invention Be Patented?

Patentability requirements require an invention be:

- Eligible
- Useful in any capacity
- New
- Credible
- Described clearly enough to be understood and recreated.

The U.S. Supreme Court stated three categories you cannot obtain patent protection in:

1. Laws of nature
2. Natural phenomena

3. Abstract ideas

Is the Human Genome Patentable?

The patentability of inventions is determined by USPTO and is judged on four factors.

1. Useful
2. Novel
3. Nonobvious
4. Enablement

Raw products are not patentable unless they are modified to a new form. Criticism from both general and scientific communities spurred an ongoing debate in the field.