



Patent Infringement Notice: Everything You Need to Know

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What Is a Patent Infringement?

A patent infringement notice is sent to an individual or a business that has made, imported, used, or sold a creation already patented in the United States. The person in question may have actively infringed on a patent. Alternatively, the person or the business may be a contributory infringer who sells a product knowing it is based on patent infringement. The claims in a patent determine the level to which the invention is protected from infringement. The court uses the broadest valid claim to decide if infringement has occurred.

For utility patents that have possibly been infringed upon, the trial judge is responsible for [defining the patent's claims](#). If the meanings he or she assigns are contested, a Markman hearing is held to define the patent's scope. This often includes expert testimony about the patent or its associated industry.

If the differences between the patent and the infringing product in question are minor, the court may use the Doctrine of Equivalents. This document is used as a guide to detect insubstantial changes to the creation that are designed solely to avoid technical infringement.

Patent Standing

Patent owners are responsible for enforcing their own [patent rights](#). If an infringement occurs, he or she can file a civil action against the perpetrator in federal court. The party in question can appeal this action through the [Federal Circuit Court of Appeals](#). If two or more parties co-own the patent, all parties must join any infringement suit. If the patent has been assigned, the assignor no longer has the right to enforce the patent. However, the assignee can independently file an infringement action.

A licensor is not legally obligated to protect a patent licensee against infringement. However, an exclusive licensee can file an infringement suit without the licensor. A non-exclusive licensee must file with the licensor as a co-plaintiff.

Infringers Need to Receive a Patent Infringement Notice

In some cases, the patent owner can recover royalties that accumulate between the patent application's publishing date and the date the patent was issued. These provisional rights are in effect when the infringer received notice of the published patent. In a 2015 Delaware case, the court held that evidence showing that the accused infringer should have known about the published patent does not necessarily show that he or she had actual notice. Thus, provisional rights are not valid unless actual notice can be established.

Patent Infringement Notice: Background

In 1999, the passage of the [American Inventor's Protection Act](#) (AIPA) provided patent applicants protection for infringement that occurs after the patent is published but before it is issued. According to this federal law, the accused infringer must:

- Be selling or have sold an identical invention
- Have received actual notice of the published patent in question

Under AIPA, however, it can be difficult to show the claims are substantially similar to those in his or her patent application.

Patent Infringement Notice Requirement

For a patent to receive provisional protection, the patent owner must prove the infringer had "actual notice" of the published patent. This must take the form of:

- Marking the product with the patent number
- Filing an infringement action
- Receiving a cease and desist letter

It does not matter whether the infringer knew about the patent if he or she did not receive specific notice through one of those three methods.

The best way to provide actual notice is by marking the product with its patent number. If the product in question has this marking, the patent owner can receive damages for infringement back to the date of the marking (a maximum of six years). He or she can also receive damages from the date on which a cease and desist letter was sent to the infringer, or the date when an infringement action was filed in civil court, provided that infringement continues after that date.

Keep in mind that if you send a cease and desist letter to a patent infringer, he or she may respond by bringing judgment against you in an unfavorable district. For this reason, consider skipping this step and filing an action in a favorable district.

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