

WHAT YOU DON'T KNOW ABOUT PATENTS COULD HURT YOUR BUSINESS

Most business people rarely confront a legal matter that involves a patent. However, anyone who runs a business should know the basics about patents, because they can provide a dramatic advantage (or cause a disaster) for your company.

Q: *Why should I care about patents?*

A: Any business that manufactures a product or provides a service should consider intellectual property protection. If you are not protected, your competitors are free to copy your products or business activities. In addition, if your competitors obtain patents, you may lose your ability to effectively compete with them in the market or be forced to pay for infringing on their patent rights. Ultimately, your failure to care about patents could put you out of business.

Q: *What is a patent?*

A: A patent is a grant of rights from the government. A patent owner is given the rights to prevent others from making, using, selling, or offering to sell his or her patented invention. In the United States, patent rights may last for about 20 years from the date the patent application is filed with the U.S. Patent and Trademark Office.

Q: *What can be protected by a patent?*

A: There are three types of patents: utility, design, and plant patents. Utility patents are the type of patent that most people are familiar with. These patents can protect a wide variety of things, such as devices, machines, processes, methods, chemical compounds, and even genetically engineered bacteria. Design patents protect ornamental designs for manufactured articles. Plant patents protect new types of asexually reproduced plants.

Q: *How does the government decide if an invention is entitled to be patented?*

A: A patent application describing the invention is submitted to the U.S. Patent and Trademark Office. The application includes "claims," which precisely describe the invention the applicant believes he or she is entitled to own. The U.S. Patent and Trademark Office examines the application, and decides if a patent should be granted. The legal tests used to determine whether an invention can be patented are complicated, however a "rule of thumb" is that a patent will be granted if the invention is substantially different and better than the state of the art.

Q: *Is it possible to lose the opportunity to obtain a patent?*

A: Yes. Unfortunately, it happens often. Most commonly, someone waits too long before filing a patent application. The United States changed from a "first to invent" patent system to a "first inventor to file" patent system effective March 16, 2013. Now the general rule is that a patent application must be filed prior to either a public disclosure or offer for sale of the invention. However, the new law does allow an inventor who has made a public disclosure of his or her invention, a grace period of one year after the public disclosure to file a U.S. patent application. Although this may seem harsh, the rules in foreign countries are even more restrictive. In most countries, a patent cannot be obtained if an item was disclosed to the public before a patent application was filed. This is why it is always advisable to make a patent filing before publicly disclosing or offering to sell a product or service that includes an invention.