

What is a Patent?

A patent is the grant of a monopoly right for an idea or development which is new and not obvious over anything that was previously known. It provides a right in the country concerned to prevent others from using an invention in return for public disclosure of the invention.

What patents protect

Patents are intended to protect new technical inventions such as new products and processes.

A patent cannot cover anything that was already in the public domain prior to the filing of the patent, or any modifications that would have been obvious to a person of ordinary skill in the relevant technical field. In the UK (and most other countries of the world), disclosures made anywhere in the world can be relevant to a later patent claim. It is irrelevant whether the inventor of an invention was actually aware of the earlier disclosure.

Exclusions

Certain things of an abstract nature are excluded from patent protection. For example, in most countries, pure methods of doing business are not patentable, although may be so if there is a technical aspect. Contrary to popular belief however, many types of computer software may be patented. More information is available on these topics in our “Patenting Software” briefing note.

What a patent gives you

A patent does not give the right to make or do what is described in it, since this may in turn infringe someone else’s patent or other intellectual property rights. What a patent does give is a right to stop others using the invention claimed in the patent (to the extent that the patent is valid) and to seek compensation for damage caused by an infringement.

Geographical scope

Patents are restricted to the country for which they were granted. They cannot therefore stop others from using the patented invention in other countries where the owner does not have patents. They can however normally be used to stop imports into the country where the patent is held.

Enforcement

The enforcement of patent rights is not automatic. The onus is on the patent owner to seek relief against an infringer, through national courts if necessary. This can be expensive and time-consuming and should therefore be considered a last resort.

Applying for a patent

Patents are not awarded automatically. They must be applied for and will only be granted if the Patent Office Examiner considers that the application meets all of the necessary requirements. The patent application is a vitally important legal document as it will determine the eventual scope of protection afforded by the patent (assuming one is granted). Furthermore there are strict rules which govern the changes that may be made after filing and thus it may not be possible to rectify mistakes or omissions later. Thus, although it is not a legal requirement, it is always advisable that patent applications are prepared by a properly-qualified Patent Attorney.

Once an application for a patent has been filed at the Intellectual Property Office (the UK Patent Office), it is possible to file applications in most other countries of the world up to a year later which are effectively back-dated to the filing date of the original UK application (termed “claiming priority”). This means that once the initial UK application has been filed, the invention may be disclosed without prejudicing the validity of subsequent overseas applications as long as the necessary steps are taken in time. For further details see “Overseas Patent Protection”.

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After grant

Renewal fees must be paid annually to maintain a patent in force. The maximum term of a patent is 20 years from the date of filing. Also, products made in accordance with a patent should be marked with the patent number on the packaging or product. This puts others on notice and may also help when seeking compensation from an infringing party.

Further advice

If you would like any further advice please contact us at Dehns using the details below.



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