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1. WHAT IS A PATENT?

A patent for an invention is a grant of a property right by the Government to the inventor (or his heirs or assigns), acting through the Patent and Trademark Office. The duration of the grant is 17 years, subject to the payment of maintenance fees.

The right conferred by the patent grant extends throughout the United States and its territories and possessions.

The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, or selling" the invention. What is granted is not the right to make, use, or sell, but the right to exclude others from making, using, or selling the invention.

• WHAT CAN BE PATENTED

1. Proper Subject Matter

The patent law specifies the general field of subject matter that can be patented and the conditions under which a patent may be obtained.

In the language of the statute, any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvements thereof, may obtain a patent," subject to the conditions and requirements of the law. By the word "process" is meant a process or method, and new processes, primarily industrial or technical processes, can be patented. The term "machine" used in the statute needs no explanation. The term "manufacture" refers to articles which are made, and includes all manufactured articles. The term "composition of matter" relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything "under the sun made by man" and the processes for making them.

A patent cannot be obtained upon a mere idea or suggestion. The patent is granted upon the new machine, manufacture, etc., as has been said, and not upon the idea or suggestion of the new machine. A complete description of the actual machine or other subject matter sought to be patented is required.

2. Utility

The patent law specifies that the subject matter must be "useful." The term "Useful" in this connection refers to the condition that the subject matter has a useful purpose and also includes operativeness, that is, a machine which does not operate to perform the intended purpose is not "useful." Alleged inventions of perpetual motion machines are refused patents.

Interpretations of the statute by the courts have defined the limits of the field of subject matter which can be patented. Thus it has been held that methods of doing business and printed matter cannot be patented.

3. Design

It is possible to obtain a patent for the "appearance" of a useful article with a design patent. This type of patent is discussed in Section X.

• NOVELTY AND OTHER CONDITIONS FOR OBTAINING A PATENT

1. Novelty

In order for an invention to be patentable it must be new as defined in the patent law, which provides that an invention cannot be patented if --

"(a) The invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

"(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the application for patent in the United States. . . ."

If the invention has been described in a printed publication anywhere in the world, or if it has been in public use or on sale in this country before the date that the applicant made his invention, a patent cannot be obtained. If the invention has been described in a printed publication anywhere, or has been in public use or on sale in this country more than one year before the date on which an application for patent is filed in this country, a valid patent cannot be obtained. In this connection, it is immaterial when the invention was made, or whether the printed publication or public use was by the inventor himself or by someone else. If the inventor describes the invention in a printed publication or uses the invention publicly, or places it on sale, he must apply for a patent before one year has gone by, otherwise any right to patent will be lost.

2. Obviousness

Even if the subject matter sought to be patented is not exactly shown by the prior art, and involves one or more differences over the most nearly similar thing already known, a patent can still be refused if the differences would be obvious. The subject matter sought to be patented must be sufficiently different from what has been used or described before so that it may be said to be unobvious to a person having ordinary skill in the area of technology related to the invention. For example, the mere substitution of one material for another, or mere changes in size, are ordinarily not patentable.

Factors considered as to the obviousness of an invention include:

1. commercial success of the invention;
2. unsuccessful efforts of others;
3. long-felt need for the invention;
4. awards received by the inventor for the invention; and
5. skepticism of others.

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