

PATENT AND MONOPOLY RIGHTS

General

Patent Rights are monopoly rights given by law to protect inventions. The monopoly period generally lasts 20 years. In order to obtain patent protection, details of the invention must go on the public register in the Patents office so that it is available for study. Others are entitled to learn from the Patent. After 20 years the invention is available to anyone for use.

The purpose of patent protection is to enable individuals and organisations who have spent monies on research and development to recoup costs and exploit profits from the fruits of their work. The intellectual property in the invention is an asset owned by its developer which patent law protects.

The right to a patent depends on who is first to file, not who is first to invent. A patent application can be made for the U.K. through the U.K. Patents Office and European Patent Office or via an international application under the Patent Cooperation Treaty. The European Patent System is not just European Union based and encompasses non EU states. The European Patent is effectively a bundle of Patent rights for different European countries together.

Patents can protect products or processes. It is common to have both the process and the product patented. In order to qualify for a patent, an invention must be novel or constitute an inventive step, be capable of industrial application and not be within any exclusion. Novelty depends on the “state of the art” at that time at the day of application. The “state of the art” means everything in the public domain that is not being kept secret or which is known. Existing products or processes or inventions and technology described in journals would not be novel.

Inventive Step Required

An invention must involve an inventive step. If the invention is obvious to a person skilled in the art, taking into account the state of the art at the priority date, then there will not be an inventive step. If what it involved would have been obvious to a skilled man at the relevant date, with knowledge of the existing state of the Art then there will not be an inventive step.

The commercial success of a product can be an indication that it involves an inventive step. A discovery, a mathematical period, scientific theory, a scheme or rule or the presentation of information will not be an invention. Patents aren't about ideas. The invention must be capable of being put into practice.

Discoveries of natural phenomena are not inventions and so aren't patentable. A computer programme could be patented, although it is usually protected by copyright legislation. If a programme has a technical effect or a practical application, it can be patented.

Patent Application

In order to obtain a patent, it is necessary to file a patent specification. The specification is a description of the claim. The description must disclose the invention sufficiently to be performed by a skilled person.

A patent specification can be a complicated technical and legal document. It needs to be prepared by someone with scientific or engineering knowledge in the relevant area. It is necessary that a description of the process is filed at the Patent's Office sufficient to allow others to reproduce it. The Patents office carries out an investigation in its initial examination of the Patent. Third parties can object after publication of a Patent.

The claim for patent sets out the scope of the monopoly right. The claim will usually be in general terms followed by more specific terms. The patent must describe the process where one is involved.

The first person to file a patent obtains priority. Famously, Alexander Graham Bell filed his patent for the telephone a mere four hours before a rival Elisha Gray. The priority date determines the date in which the invention is judged as new.

The Patent Office usually takes about 18 months to complete its initial examination of the application. It then publishes the application and it is put in the public register. Third parties have a right to object to the patent. If no major issues arise, patent protection will be granted within 6 months after publication. This two year period counts as part of the 20 year life of the patent.

The inventor is the person entitled to the patent. Inventions in the course of employment will normally belong to the employer.

Infringement

Infringement of a patent arises where a third party, without the consent of the patent owner, makes, disposes of or imports products or keeps for disposal products in breach of the terms of the patent. Where an invention uses the process or offers it for use in the United Kingdom and knows or it is obvious to a reasonable person, that its use is without the consent of proprietor, there will be an infringement. It is also an infringement where a party uses or imports a product obtained directly by means of a process in breach of patent.

In legal action the defendant frequently argues that the patent is partly or wholly invalid. If there was anything existing at the time of the patent which disclosed the process or product, then the patent is potentially invalid.

A claimant may seek to restrain misuse by an injunction. A claimant is entitled to an order of delivery and destruction of the defendant's goods, damages and to an account of profits unlawfully earned in breach of the patent.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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