

How can I protect my idea



**Karolinska
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Intellectual property

The term Intellectual Property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce. There are several types of IP Rights (IPR), such as patents, designs, copyright and trade-marks. IPR are protected in law and enables people to earn recognition or financial benefit from what they invent or create.

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. In principle, the patent owner has the exclusive right to prevent others from commercially exploiting the patented invention.

Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region. The protection is granted for a limited period, generally 20 years from the filing date of the application. For patents covering pharmaceutical products, some countries offer patent term extension extending the patent term by up to five years.

How can I get a patent?

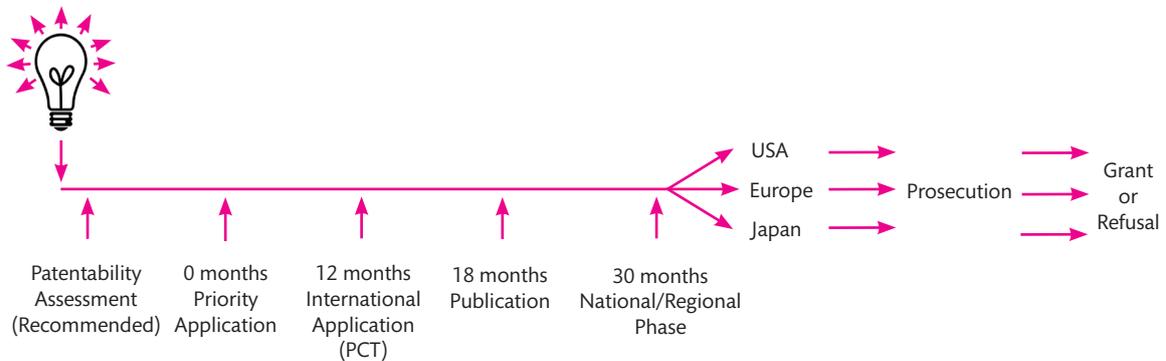
Inventions are only patentable if they are novel, inventive and have industrial applicability.

- If the invention has been made available to the public, for example by publication in a journal, online or in an application for research funding that is available to the public, the invention is no longer novel. Therefore, it is essential that a patent application is filed before any form of publication of the invention takes place.
- Inventive step means that the invention has to be non-obvious to a person skilled in the art.
- The requirement of industrial applicability means that the invention must be useful industrially, it cannot merely be an idea.

Patent protection is not acquired automatically. You have to file a patent application describing the invention in technical terms and in a form that meets certain requirements. It is strongly recommended to carry out a patentability assessment before filing and to use a professional patent attorney for the drafting and filing of the patent application.

The first step is usually to file your patent application with a national patent office. Under the 1883 Paris Convention, someone who files a patent application (priority application) in one country can then claim the "priority" of the filing date of that patent application for later patent applications in other countries, provided that they relate to the same invention and are filed within twelve months of the first one.

An international patent application (PCT, Patent Cooperation Treaty) may be filed, within said twelve month period. The PCT application covers about 152 countries. The due date for national or regional phase entry is usually 30 months from the priority date, i.e., by this time the applicant has to make a decision in which specific countries patent protection is desired and enter the PCT application into National/Regional phase in each of those countries/regions. The patent application is published 18 months from the priority date of the first filed patent application.



What are the costs for obtaining a patent?

Professional assistance to draft a patent application costs from about 50,000 SEK. This is in addition to the official fees for filing the application (about 3,000-15,000 SEK). The filing of a PCT application costs from 31,000 SEK in fees, in addition to patent attorney costs (from at least 20,000 SEK), depending on the extent of modification needed of the first filed patent application. At the time of national/regional phase entry of the PCT application (30 months from the priority application), significant costs occur (official fees, translation costs, patent attorney costs).

During the prosecution, i.e. the examination in each country, there is further patent attorney cost as well as official fees. After patent grant, annuities need to be paid to the patent office in each country, where patent protection is desired, to maintain the patent in force. The total cost for a patent family from filing to grant in about ten countries may easily exceed 1 MSEK.



Who owns an invention?

The right to an invention originates from the inventors and is determined by law and agreements. If the invention has been conceived within the scope of employment, the inventor usually has to assign the invention to the employer. However, for scientists and teaching staff employed at Swedish universities, the "professor's privilege" applies, and the invention is owned by the inventor personally, not by the university, unless otherwise agreed.

Inventorship is a legal matter and is different from authorship. Only the individual or individuals who conceived the claimed invention and had a clear appreciation of how to reduce it to practice, are inventors. Colleagues who merely assisted in experimental work or in the manufacture of prototypes are generally not inventors.

Ownership is distinct from inventorship and can be agreed upon. For example, an inventor can agree to assign the rights to the invention to a company or agree to share ownership or licensing income with other individuals than the inventors.

How can I use a patent?

A patent gives the right to prevent others from making, selling or using the claimed invention. To enforce the patent, the patentee has to initiate litigation in civil court in each country where infringement has occurred and the patentee desires to enforce the patent. The court can order preliminary injunction to prevent the infringer from continuing the infringing activity. The court can also award damages. Generally, there are significant costs associated with enforcing a patent.

The patentee can give licenses under a patent and thus obtain revenue. In that case, a license agreement is put in place which may, for example, include clauses on payments to the patentee as well as handling of infringement and costs of litigation. A license can be exclusive (only one licensee) or non-exclusive (multiple licensees). The patentee may also choose to assign the patent to another party, such as a company, in which case the company becomes the owner of the patent right.

Design

Design protection may be granted to the ornamental or aesthetic aspect of a product. A design may consist of three-dimensional features, such as the shape of a product, or of two-dimensional features, such as patterns, logos, lines, colors or web sites. In most countries, a design needs to be registered in order to be protected.

In some countries, inter alia, within EU, time- and scope limited protection is granted to so-called "unregistered designs". To be eligible for protection, designs must be new and must have an individual character. The owner of a registered design has an exclusive right to use the design. In general, the term of protection is maximum 25 years and registration is valid for a period of five years at a time.

- The official filing fee for a design application in Sweden is about 2000 SEK.
- In case of an infringement for the design protection, the owner may initiate litigation in a civil court, which can order the infringer to cease its infringing activity. Furthermore, the infringer may be liable for damages.

Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. A word or a combination of words, letters, and numerals can constitute a trademark. Trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, as well as sounds, fragrances or color shades.

A trademark registration will confer an exclusive right to the use of the registered trademark in relation to the goods/services included in the registration. Trademarks are territorial rights and protection can be obtained through registration at national level, such as in Sweden, or on regional level, such as in the EU. At international level, there is a possibility to seek protection in multiple countries simultaneously, using the so called international system. The exclusive right to a trademark may also be acquired through extensive use on the market.

Ownership of a trademark can be joint or exclusive, and a trademark can be licensed to third parties. The term of trademark registration can vary from country to country, but is usually ten years. It can be renewed indefinitely on payment of additional fees.

A registered trademark gives the owner the right to prevent others from using the registered trademark. In case of infringement, the owner may initiate litigation in civil court. The court may order the infringer to stop its infringing activity. Furthermore, the infringer may be liable for damages as well as fines and imprisonment.

Copyright

Copyright is the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps and technical drawings.

Translations and other alterations of the original work can also be protected by copyright, if it displays some originality of its own. Such derivative work becomes a second, separate work independent in form from the first.

There are two types of rights under copyright; economic rights, which allow the rights owner to derive financial reward from the use of his works by others; and moral rights, which protect the non-economic interests of the author, including the right to claim authorship of a work and the right to oppose changes to a work that could harm the creator's reputation. The economic rights can be assigned or licensed by the author, but the moral rights cannot.

In the majority of countries, including Sweden, copyright protection is obtained automatically without the need for registration. A number of countries have nonetheless a system in place to allow for the voluntary registration of works. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales, and the assignment or transfer of rights.

- In most countries, the duration of copyright is dependent on the duration of the author's life.
- After he or she dies, the copyright is still valid for at least 50 more years.
- In most countries, like in Sweden, the term is even longer, 70 years after the author's death.

Information about the document

This document should not be construed as legal advice or legal opinion on any specific facts or circumstances.

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Further information may be obtained at:

Patents, trademarks, designs and copyright:
www.prv.se and www.wipo.int

Patents: www.epo.org

Trademarks and designs: <https://euipo.europa.eu>

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