

## Patent Process and Requirements.

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## **Patent Process and Requirements.**

This document briefly outlines the requirement for and details of the patent process. There are numerous exceptions and complications to the principles outlined here. Always seek professional advice on any legal matter. Centron System Solutions does not offer professional advice on legal matters. It accepts no liability for loss incurred through reliance on information given in this document. All costings are given as ballpark figures and change from country to country and from time to time.

### **Introduction.**

Some protection, such as copyright and unregistered design right, generally comes into force automatically when a new idea is created, but stronger protection, involving patenting or design registration, has to be applied and paid for. In some cases, more than one form of protection may be appropriate.

The idea must not be made available publicly, for example; published in a magazine or learned journal or published in the Internet or presented at a gathering. Private discussion with an agent that has signed a confidentiality agreement is acceptable and will not endanger your ability to patent your idea.

Patenting is not always the best choice, but often the only choice for solo inventors. A patent protects a new invention, i.e. a technical development. An invention is patentable if it is novel, if it involves an inventive step and is capable of industrial application.

An invention must also be regarded as involving an inventive step. This means that, at the time of application, your idea would not have been obvious to a person skilled in the field.

For an invention to be capable of industrial application, it must be possible to make or use it in some kind of industry. This means that the invention must be at least theoretically usable in some form of apparatus or device, product, material or substance, or be an industrial process or method of operation.

Certain things may not be patented. These include a discovery, scientific theory or mathematical method, mental process, literary, artistic or aesthetic creation, a scheme or method for doing a mental act, doing business, presentation of information, or a method of diagnosis or treatment practised on a human or animal body.

The owner of the invention is the inventor or the person who, as employer of the inventor, acquired ownership of it, or someone to whom the inventor has assigned the right in the invention.

## **Patent Royalties Are Tax Free.**

Under existing tax law provisions, an Irish resident for tax purposes may receive patent royalties free of income tax. Where the Patentee and the Licensee are connected, the situation is more complicated. It is strongly recommended that a tax advisor's advice be taken in this area.

## **Patenting Process.**

There are two stages in the patent process.

### **1. Patent Application:**

This is like staking a claim. This marks the date that you put the claim to the idea. Costs: Cost tends to be fixed and can be dependant on the complexity of the idea.

### **2. Patent Filing:**

After the application, you have 12 months to decide if you want to proceed to filing. If you do, your claim is backdated to the application date (called the Priority Date). This is a time of hard work establishing a market, trying to get licenses sold, negotiating with potential customers etc. The time goes very fast and shouldn't be used for development time. NEVER go to patent application before you are as satisfied, as you can be, that the product is ready to go to manufacture.

## **Filing a patent can be done in two ways.**

1. File direct in each country that you feel there is a market for the product. Quicker, but riskier, if you miss a country, there is no chance to go back for a second filing. That country will be free to exploit your idea always. It is also cheaper at about 12,000 Euro to start and 3,500 Euro per country after 18 months.
2. Apply for a Patent Co-operation Treaty (PCT) patent. This covers you world-wide for a further 18 months and costs about 13,000 Euro for the filing. However, after 18 months, you will still have to go through process 1. This route buys you more time to check out the world wide perspective and gives you a better chance of getting it right.

After all the paperwork is filed and done, there will be a delay of up to four years while it moves through the machinery. This is when a product has Patent Pending on it. It hasn't yet been granted a patent. Once the patent is granted, under law, no one may manufacture or distribute your product without your permission. Up to that point, however, they may 'borrow' your idea. If your patent is not granted at the end of the day, there is nothing you can do. If it is, you can then take them to court and backdate all damages to the Priority Date. But until your patent is granted, there is legally nothing you can do to stop them. The life of a patent is usually 20 years.

## **Renewal Fees**

The majority of Patent Offices throughout the world charge annual maintenance fees on Applications and renewal fees after the Patent is granted. Such fees are usually payable in respect of the 3rd and subsequent years and increase on an annual basis throughout the life of the Patent.

### **Other ways of protecting your idea.**

**Design Protection:** If your idea is dependent on shape, colour etc. it may be possible to design protect it. This is quicker than patenting.

**Copyright:** 2 Dimensional Works: Copyright is relevant to all original two dimensional works such as text, drawings, paintings, engravings, photographs, posters, graphic works or other such artistic works. It protects the expression of the idea but not the idea itself. All engineering drawings relating to the product should be dated. These are covered under copyright and anyone reproducing them or using them without the owner's permission is breaking the law.

**The Inventor's Notebook:** In America, Priority Date is the date that you first had the idea, not the date that you filed. However, the only proof acceptable in Law is The Inventor's Notebook. This is a bound, blank notebook filled in by the inventor, documenting the process and progress of the invention. No pages must be removed or added, and any blank pages ruled through and dated. Permanent ink should be used and all errors crossed out, corrected or explained - do not simply use an eraser or correction pen. Each page must be signed and dated by an independent witness, who is considered enough of an expert in the field of your invention to be able to recognise what they are signing. The witness cannot be a co-inventor. There is also the myth of sending your documents to yourself. This has no legal standing. All it will do is establish the date that you thought of the idea. BUT if you don't apply for a patent before anyone else, it will not be considered as a legally acceptable priority date. All it will do is establish the possibility that the other person stole your idea.

### **Review of Key Points.**

A summary of the key pointers given above is useful here:

1. The idea must not be made available publicly, for example; published in a magazine or learned journal or published in the Internet or presented at a gathering. Private discussion with an agent that has signed a confidentiality agreement is acceptable and will not endanger your ability to patent your idea.
2. An Irish resident may receive patent royalties free of income tax.
3. Never go to patent application before you are as satisfied, as you can be, that the product is ready to go to manufacture.