



To Patent or Not to Patent? That is the Question

The patent process is vital to many businesses, especially start-ups. The trap many fall into is waiting too long to file. Dragging your feet can result in your patent rights being inadvertently forfeited. Yet, filing too early can lock you into a timeline for which your business may not be ready. Patents can be lucrative investments, but they can be very expensive to obtain and even more costly without the proper know-how. Ensure you get the most out of your investment by learning more about the patent process and engaging experienced counsel to help you navigate common yet complex issues.

What Does a Patent Do?

A registered patent gives the holder the right to sue anyone who makes, uses, sells, offers for sale, or imports into the United States without the holder's permission. This right includes anything that meets every element of at least one of the patent's claims— a holder may be able to sue some parties that did not infringe directly but contributed to or otherwise induced others to infringe. A holder may also be able to sue for acts of infringement that occurred while the patent application was still "patent pending."

The holder of a patent, or a "patentee," has several options for monetizing a patent:

- Make and sell the invention and collect all profits.
- Offer a license to others to make and sell the invention and charge a fee or royalty.
- The terms can vary drastically from license to license and may be offered exclusively or non-exclusively, include restrictions or quotas, and include or exclude enforcement rights.
- Sell some or all the patent rights.

However, it is also necessary to consider what a patent will not do:

- It does not produce a product. Although many resources are available to help, the patentee is ultimately responsible for securing the manufacturing, marketing, and distribution capabilities it needs to make and sell the product.
- It does not enforce itself. The patentee is responsible for discovering and acting upon infringement and financing those actions. Patent litigation costs, on average, millions



of dollars, and while the prevailing party may be able to recoup some legal fees, there is always uncertainty in the outcome and those fees might not be paid for several years (if at all).

- It is not an absolute right to use the invention. The mere grant of a patent does not automatically mean the patentee won't infringe on somebody else's valid patent. Two parties can have patents that block each other's products.
- It will not last forever. A patent will expire 20

years from the filing date (subject to some extensions and reductions), at which point the design will pass into the public domain. If the secrecy of an invention is valuable, such as a recipe or formula, it might be better protected under trade secret law.

- It is not immune to challenges. A party that is sued or threatened with a lawsuit for infringement can challenge the patent's validity either in federal court or in an administrative proceeding.

Breaking Down Patents

A patent that does not meet your needs or will not stand up in court is not worth the paper it is printed on. Learn more about the components of a patent in our companion article, "Breaking Down Patent," to better understand which patent is right for you.

Ready to start asking questions? Carlile Patchen & Murphy's patent counsel have years of experience prosecuting, advising, and consulting on patent and other intellectual property issues. We help with all stages of securing a registered patent and conducting patent searches. Our consultations ensure you get the most value out of your patent investment and help ensure you get the proper protection for your business.

Check out our intellectual property practice area page to learn more about the additional patent services offered by our team. Please do not hesitate to contact your Carlile Patchen & Murphy LLP attorney if you have any questions about patents.