

Understanding Patents

I. What is a patent?

If you have invented a new technical solution, method, device or product, or a new way to use them, you can apply for a patent. A patent gives you an exclusive right to your invention and the right to prohibit competitors from copying it. With an international patent application (PCT), you can obtain a patent in every country that is important to your company.

Patents can be granted for inventions in any field of technology, from an everyday kitchen utensil to a biotechnology research tool. An invention can be a product, e.g., a chemical compound, or a process, or a process for producing a specific chemical compound. Many products contain a multitude of inventions. For instance, a laptop can involve hundreds of inventions, working together.

Here are some examples of patents in three different technical domains.

- The first is superconductors. In 1987 the Nobel Prize in Physics was awarded for high-temperature superconductors, which had been discovered in 1986. Patent applications followed, together with high inventive activity in this field. Many of these patents turned out to have very little value. Research interest has since decreased, and the number of patent applications for superconductors has fallen.
- The second example is bicycles. Many patents concern simple inventions used every day. During the last ten years, more patents have been applied for in the field of bicycle technology than in superconductor technology. More than 130 million bicycles are sold every year. There are a large number of companies in fierce competition in this market.
- The third example is toothbrushes. In 2012, more than 2 000 patents relating to toothbrushes were published. One of Colgate's manufacturing plant's alone reportedly manufactures 1 500 million toothbrushes a year, which is around a tenth of total global production (Source: EPO).

Despite the high number of patents, no single company has a monopoly on bicycles or toothbrushes. Instead, many companies have small proprietary technologies that make their bicycles or toothbrushes a little bit better than others and thus help them to stay competitive.

II. Conditions of patentability

The following conditions must be met to be eligible for patent protection:

- **Novelty:** the invention must show some new characteristic not known in the body of existing knowledge in its technical field, i.e., "prior art".
- **Inventive step:** the invention must involve an inventive step that could not be obviously deduced by a person with ordinary skill in the relevant technical field.
- **Industrial application:** the invention must be useful; it must be capable of being used for an industrial or business purpose beyond a mere theoretical phenomenon.
- **Patentable subject matter:** In many countries, scientific theories, aesthetic creations, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, methods for medical treatment (as opposed to medical products) or computer programs are not patentable.
- **Disclosure:** the invention must be disclosed in an application in a manner sufficiently clear and complete to enable it to be replicated by a person with an ordinary level of skill in the relevant technical field.

When is an invention "new"?

- When it is not part of the state of the art
- State of the art = everything made available to the public before the date of filing

Keep your invention confidential until you have filed your application!



Source: EPO IP Teaching Kit

There is a 12-month grace period for filing a patent in Seychelles. The disclosure to the public of the invention will not be taken into consideration if it occurred within 12 months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or their predecessor in title or an abuse committed by a third party in relation to the applicant or their predecessor in title.

Do's and don'ts for preserving novelty



Don'ts

- Do not publish any articles, press releases, conference presentations/ posters/ proceedings, lectures or blog posts, etc. before you file!
- Do not sell any products incorporating the invention before you file!

Do's

- Sign a non-disclosure agreement (NDA)!
 - Seek professional advice at an early stage!
 - File before anyone else does!
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III. Rights conferred by patents

You should always remember that a patent is a negative right, not a positive one. Patent owners have the right to prevent others from making, using, offering for sale, selling or importing a product that infringes their patent, for a limited amount of time. Exceptions include use for non-commercial purposes, such as private use or academic research. Further options include licensing inventions to others, or allowing everybody to use the invention for free.

Patents in Seychelles are granted for 20 years from the date of the filing of the patent application.

Many important technologies such as CDs, DVDs, mobile phone technology and digital TV are covered by numerous individual patents that companies license to each other in a process known as cross-licensing. If commercialising your invention means using the intellectual property of others, then you need to have their permission!

Example: Patenting of electric kettle with a ceramic heating element

Let us imagine that you have invented the first-ever electric kettle to have a ceramic heating element as its base-plate. This kettle has advantages over kettles which have a metal heating element upon which lime scale forms. Such a kettle might be novel and inventive, and it might be patentable under patent B.

However, your patent B does not grant you the right to use your invention, because it falls within the scope of an earlier patent for all electric kettles - patent A. For you to make, use and sell your invention you need a licence from the owner of the earlier, broader patent, patent A. However, the holder of Patent A would need a licence from you to make kettles with ceramic heating elements. This is where you could enter into a cross-licence agreement. Indeed, this is where the vast majority of industrial collaborations start.

Patents owned by others may overlap or encompass your own patent. In this case, you need to obtain the right to use other people's inventions (licence) before you can start commercialising your own patented invention, and vice versa.

Limitations and exemptions to patent rights

Patent rights can be limited under very restrictive circumstances. For instance, the patent law of Seychelles stipulates that the patent rights can be curtailed for acts done only for experimental purposes relating to a patented invention; or for acts done privately and on a non-commercial scale or for non-commercial purpose, provided that it does not significantly prejudice the economic interests of the patent owner.

IV. Obtaining Patents

Patent rights are obtained through an application made at the national IP Office of Seychelles.

Drafting a patent application

A patent application consists of the following parts:

- Request – title of the invention, date of filing, priority date and bibliographic data such as the name and address of the applicant and inventor;
- Description of the invention, in clear language and with enough detail so that a person skilled in the same technical field can reconstruct and practice the invention;
- Visual materials – drawings, plans, or diagrams that describe the invention (if necessary);
- Claims – a clear and concise definition of the invention for patent protection is being sought;
- Abstract – a summary of the invention.

In order to obtain a patent, the claims part must typically describe an invention that is new, useful and non-obvious in view of the "prior art" that exists.

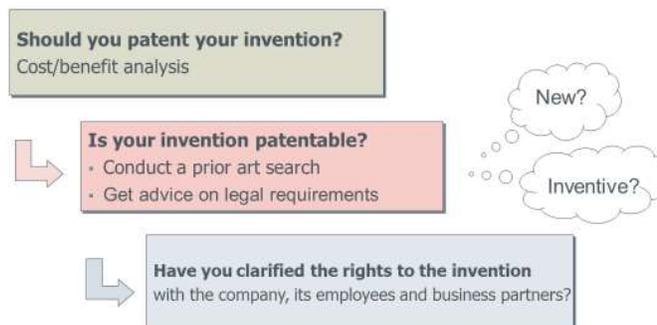
When you apply for a patent, you will be required to pay an application fee and may have to pay an examination fee, as well as an annual maintenance fee for the application.

A prior art search can help you avoid wasting money on a patent application if the search uncovers prior art references that are likely to make a patent impossible to obtain.

Filing a patent application

You should apply for patent protection as soon as you have all the information required to draft the application. Moreover, in Seychelles and in virtually all countries worldwide patents are granted on a first-to-file basis. Applying for patent protection early will make it easier to get financial support or to license your invention. Also, the earlier you file, the earlier the patent will be issued.

What to consider before filing an application



Source: EPO IP Teaching Kit

Things to remember

Usually, it is not possible to make significant changes to the original description. Also, once you file an application in one country/region, you normally have 12 months to file for a patent for the same invention in other countries in order to enjoy the benefit of the filing date of the first application (right of priority). But filing in multiple foreign countries, especially before knowing whether your invention will be commercially successful, may be too expensive.

Keeping an invention confidential prior to filing the application is essential. In many circumstances, public disclosure before filing can destroy the novelty of an invention, making it unpatentable.

Any pre-filing disclosure (e.g., for test-marketing, to investors or other business partners) should take place only after signing a confidentiality or non-disclosure agreement.

V. What if my patent rights have been infringed?

As a general principle, any person who does not have the patent proprietor's consent is prohibited from certain acts, and breach of those prohibitions will constitute patent infringement. Patent proprietors can take legal action, including filing for injunctive relief and/or claiming damages from persons considered to be infringing their patent.

The competence for infringement actions concerning patents lies with the competent court in Seychelles.

Precisely what constitutes infringement will be determined by the national courts of Seychelles with reference to the applicable national law. Typically, the acts considered to undermine the right of the patent owner to prevent third parties' direct use of the invention include:

- Making, offering, putting on the market or using a protected product or importing or stocking the product for these purposes,
- Using a process or offering the protected process for use, and
- Offering, putting on the market, using, or importing or stocking for these purposes the product obtained directly by a protected process.



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