

Patents Q&A

Updated July 2020

What is a patent?

A patent is a right to stop others from exploiting an invention covered by the patent for a limited period of time. During this period, competitors are not allowed to manufacture, sell, import or use the invention without permission from the patent owner. In exchange for the right, the invention must be publicly disclosed in a patent specification.

Why apply for a patent?

Apart from stopping competition, a patent owner can license the invention to someone else in return for royalty payments. A patent portfolio is also a business asset that generally makes a business more attractive to potential investors and commercial partners.

What can be patented?

Any commercially useful invention in a field of science or engineering can be patented in Australia. Examples include software inventions, pharmaceutical products, biotechnology products, mechanical and electrical devices, and medical products. The invention must be also be new and must be more than an obvious improvement or modification over existing technology.

What types of patents are there in Australia?

There are two types of patents in Australia.

- A standard patent gives long-term protection of up to 20 years. Standard patent protection is suitable for inventions that have a relatively long development and commercialisation cycle.
- An innovation patent is a relatively quick and inexpensive way to protect simple inventions that provide minor advances over existing technology. Innovation patent protection is also suitable for inventions having a short commercial life. The term of protection is shorter and lasts for a maximum of eight years.

How do I apply for a patent in Australia?

The first step generally involves filing a provisional application to establish what is known as a priority date. An early priority date is important because anything published before this date can be used to attack the application. The application will have priority over applications filed by potential competitors after the filing date. The provisional application lasts for 12 months, which is a useful period for identifying roadblocks before investing more time, money and effort on the patent application.

To have a patent granted, a complete application must be filed within 12 months of filing the provisional application. The complete application can be filed in Australia and/or overseas. A patent specification for a complete application is based on the provisional specification and includes details of any modifications, developments and improvements to the invention. No new matter may be added to a patent specification, be it a provisional patent specification or a complete patent specification.

A flowchart of the Australian patent application process is available on our [Resources page](#).

Disclaimer: This document is general in nature, and must not be relied on in lieu of advice from a qualified professional in respect of your particular circumstances.

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How do I apply for a patent overseas?

There are two options:

The first option is to file a patent application directly in each country of interest. This option is the most cost-effective if the applicant knows exactly in which countries protection is required within 12 months of the priority date.

Alternatively, the applicant can delay making decisions and incurring expenses for another 18 to 19 months by filing a single International (PCT) Application. This option is also recommended if patent protection is sought in four or more countries. The PCT Application reserves the applicant's rights to file individual applications in over 140 countries. Filing individual applications following the filing of a PCT Application is known as entering national or regional phase.

A flowchart of the patent application process overseas is available on our [Resources page](#).

How much will it cost?

The cost for preparing and filing a provisional patent application in Australia varies depending upon a number of factors, such as complexity of invention and urgency.

Obtaining foreign patent protection can be an expensive and lengthy procedure. There are also other costs associated with examining the application and payment of renewal fees in each country.

Can I disclose my invention before filing a patent application?

It is essential to keep an invention secret before a patent application is filed. Early disclosure of an invention may reduce the scope of any patent eventually granted, or may lead to that patent being invalid. Disclosure may take place by the spoken word, drawings, a written description, exhibition, use or sale. Some limited confidential disclosure may not be prejudicial to your rights.

What happens after a standard patent application has been filed in Australia?

A patent application number is allotted by the Patent Office, and full details of the provisional and the complete specifications will be published 18 months after the priority date. The date of publication is important because damages are assessed retrospectively to this date in any successful infringement action after a patent has been granted on the application.

The application will be examined once examination has been requested. If there are objections, an official examiner's report will issue. Provided the invention is new, the objections can usually be readily overcome by proposing amendments to the specification or presenting counter-arguments, or both.

Once all objections have been overcome, the application is accepted. Acceptance is advertised to allow interested third parties to oppose the application. If there is no opposition, or an opposition is unsuccessful, the patent is sealed and a deed of letters patent issues a few months later. The application becomes a patent at sealing.

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What can a patent attorney do for me?

Getting a patent is one thing, and getting a patent that adequately protects your invention is another. This is where a qualified patent attorney can help you with their years of experience and training. We can assist you in all stages of a patent application process, including:

- Assessing an invention to determine whether it can be patented
- Conducting searches to locate any similar existing technology
- Preparing and filing a patent application
- Dealing with examiners at Patent Offices to get the patent granted
- Providing infringement advice on whether a product infringes a patent

What do I do before making an appointment?

Before making an appointment to see a patent attorney you should consider the following questions. This will enable us to assist you more effectively.

- Into what field does the invention fall? Information and communications technology, mechanical engineering, electrical engineering, chemistry, medical technology or biotechnology?
- Describe what existed in the field prior to the invention. What problems did the existing technology have which the invention addresses? If possible, please provide a description of the closest known prior technology, for instance scientific papers or product descriptions.
- Describe the invention and its advantages. If possible, prepare a detailed description with sketches and/or flowcharts.
- Are there any publication or product launch deadlines? This will determine the urgency (and cost) of the work which we are to do on your behalf.