ARE YOU READY TO START THE PATENT PROCESS?

WHAT DOES A PATENT ACTUALLY DO?

A patent is a limited monopoly granted by the government. A U.S. patent allows the patent owner to prevent others from making, using, offering for sale, selling or importing the patented invention in the U.S.

YOU'RE READY TO PURSUE PATENT PROTECTION WHEN...

Your invention has substance.
The technology you want to patent must meet the legal requirements for patentability.

Novel: Different from all “prior art,” not just prior patents.
- Other types of “prior art” such as journal publications, products on the market, or public demonstrations can work against your patent application!
- There are some exceptions where your own work can be excluded as prior art. Most notably, the U.S. has a one-year “grace period” for the inventor’s own sales and public disclosures.

Non-obvious: More than a trivial variation of “prior art.”
- Inventions that solve a technical problem, address a need, or have advantages over the prior art are often non-obvious.
- Obviously is evaluated from the perspective of a person of ordinary skill in the relevant field of technology; so innovations developed by experts in their own field of technology often meet this criterion.

Described in writing: With sufficient technical detail and legal precision.
The patent application must include enough technical disclosure (in the form of drawings and written description) to:
- Show possession of the invention as of the filing date of the patent application.
- Enable a person of ordinary skill in the art to make and use the invention without undue experimentation.

Eligible subject matter: A type of invention that can be patented under US law.
- Most high-tech inventions are patent-eligible, as long as they can be described in concrete terms.
- This requirement can be a more difficult issue for patent applications covering software, life sciences, pharmaceutical, and business method inventions.

You have the resources.
You must have the time and money needed to complete the patent application process.

Budget
- Typically, at least $15,000 for the first 18 months — and another $15,000 for the rest of the process (1-4 years).
- Not that flush? You may be able to get by with $4,000-$5,000 in the first year by filing a provisional application.

You’ve established a business structure.
You should sort out the following logistics, ideally before filing:

Ownership: Is everyone on the same page about who will own the patent rights?
- In the majority of patent applications, all inventors assign to a corporate entity (typically their employer).
- Other scenarios (e.g., joint ownership) can get very complex and should be sorted out as early as possible.

Commercialization: How will the invention be of commercial value?
- Ideally, your patent application will describe the invention, AND the commercial products or services that embody the invention.
- Ask yourself:
  - How will we generate revenue from this invention?
  - How might our competitors use the invention?

WHAT TO DO IF YOU’RE...

Lacking substance?
- Keep developing your technology
- Consult a lawyer — you might be better off than you think!

Lacking resources?
- Plan ahead, budget for next year
- Consider filing a provisional application
- Consider fundraising options

Lacking business structure?
- Start the patent process: Develop the business structure simultaneously!

NICE TO HAVE, BUT NOT REQUIRED

A prototype
- Data proving your invention works

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