



An Introduction to Patents

Choosing the right patent to protect your invention

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An Introduction To Patents

As an inventor, thinking creatively is your lifeblood. Legal details may not be exactly your niche, but you understand protecting your latest-and-greatest achievement is essential to your success. That's where we come in. LegalZoom can help you apply for a patent quickly and easily.

What does a patent protect?

A patent provides protection by way of exclusion. In other words, a patent gives you the right to exclude others from making, using or selling your unique invention. It also gives you the right to prevent others from importing your invention into the US without your permission. Filing for a patent is one of the best ways to ensure the rights to your invention are secure.

Patents, versus Copyrights or Trademarks

Patents, copyrights, and trademarks offer different types of protection for different types of work. Patents and trademarks are even managed by a different federal agency than copyrights. In a majority of cases, only one type of intellectual property protection is possible. In certain cases though, multiple types of protection may be appropriate.

Your Idea	Provisional Application for Patent ¹	Utility Patent	Design Patent	Copyright Registration	Trademark Registration
An invention with a function (such as a new and useful machine, manufactured item, process, or chemical composition)	✓	✓			
A work you authored (such as a play, novel, song, sculpture, photograph, choreography or architectural plan)				✓ ²	
An ornamental design for a manufactured item, that doesn't affect its function (such as a watch's face plate)			✓	✓ ³	✓ ⁴
A way to identify goods or services in the form of an image or word(s) (such as a logo or a brand name)					✓

- 1 A provisional application for patent is an optional first step towards a non-provisional utility patent. Provisional applications offer the applicant one year of "Patent Pending" status. Also, a provisional application allows the applicant to immediately secure a filing date while preparing the full utility patent application. Filing for a provisional application with LegalZoom makes the process fast and easy.
- 2 Computer code is also copyrightable; therefore, a copyright might apply to source code for a patented program or piece of software, potentially providing its creator more protection.
- 3 In some instances, a design may qualify for both design patent and copyright protection.
- 4 In instances where a brand logo is used as ornamentation for a manufactured article, that logo may qualify for trademark protection as well.

Why Patent Your Invention?

A Hard Lesson from History

On February 14, 1876, Alexander Graham Bell applied for a patent on an apparatus that could transmit speech electrically, beating out his rival, Elisha Gray, by just two hours. In actuality, Gray's design actually worked better but timing was all that mattered. When Gray later filed a lawsuit, the courts awarded the patent to Bell, who went down in history as the official inventor of the telephone.

The moral is simple. If you have an idea—even one without immediate apparent commercial value—don't wait for someone else to file it and cash in first. By failing to secure the rights to your idea, you run the risk of someone else claiming those rights or having your invention slip into the public domain. Once exclusive rights are lost, there is very little you can do to prevent others from manufacturing, selling and capitalizing on your invention. Learn from history and protect your idea as soon as possible.

If you choose to apply for patent protection, LegalZoom has the necessary experience to make filing your application quick and easy. For more information about applying, please contact LegalZoom Customer Care at (888) 791-0227.

What are a Patent Owner's Rights?

As a patent owner, you can control the way your invention is both used and made. For example, if you patent a new type of radio technology, you can prevent others from using or selling devices incorporating your protected technology. You can even prevent others from importing your patented item into the US without your permission. In essence, you have complete, nationwide control over the technology, design, or plant claimed in your patent. Because patents provide a short-term monopoly on a particular technology, the USPTO reviews patent applications with a high degree of scrutiny. Moreover, patents provide a shorter protection term than either copyrights or trademarks, usually 20 years for utility patents and 14 years for design patents.

What Can an Inventor Do with a Patent Once it has been Granted?

Patents are considered a form of personal property under the law. Like other kinds of property, patent rights can be co-owned, assigned, sold, licensed (exclusively or non-exclusively) or inherited. Most importantly, patents can be used as a legal basis for stopping others from infringing on your intellectual property rights. This can be accomplished either by formal request, by suing in federal court or both.

Utility Patent, Provisional Application for Patent, Design Patent Or Plant Patent –Which To Choose?

Types of Patents

There are several types of patents recognized under US law, each of which grants a specific type of benefit or protection. They are:

- **Utility patent:** May be granted on any new or improved, useful and non-obvious machine, manufactured article, process or composition of matter
- **Provisional application for patent:** An optional first step towards a utility patent, provisional applications grant an immediate priority filing date and “Patent Pending” status for a full 12 months before an inventor files a full utility patent application
- **Design patent:** May be granted on any new, original and ornamental design for a useful article
- **Plant patent:** May be granted on any new and distinct variety of plant that can be asexually reproduced

Although it's possible to qualify for more than one type of patent, most inventions qualify only for one. LegalZoom offers filing services for provisional applications for patents, utility patents, and design patents.

At-a-Glance Comparison Chart

Patents, trademarks, and copyrights offer different types of protection and are managed by two different federal agencies.

Feature	Provisional Application for Patent	Utility Patent	Design Patent	Copyright Registration	Trademark Registration
Which federal office issues this protection?	U.S. Patent & Trademark Office	U.S. Patent & Trademark Office	U.S. Patent & Trademark Office	U.S. Copyright Office	U.S. Patent & Trademark Office
How long does the benefit/protection last?	1 year	20 years	14 years	Life of author plus 70 years ¹	10 years (with unlimited renewals) ²
Where is this protection valid and enforceable? ³	Within the U.S.	Within the U.S.	Within the U.S.	Within the U.S.	Within the U.S.
Are maintenance fees required?	No	Yes	No	No	No ⁴
Can I renew?	No	No ⁵	No	No	Yes
If I don't file an application, do I still have ownership rights?	No	No	No	Yes	Yes
What type of application is required?	Provisional Application	Non-provisional Application	Design Patent	Copyright	Trademark Application
Who may apply?	Author(s)	Author(s)	Author(s)	Author(s) ⁶	Owner(s) ⁷

1. Term may differ for works made for hire (a work prepared by an employee within the scope of his or her employment, or a work specially ordered or commissioned in certain specified circumstances) or works published before 1978.
2. Registrations granted before November 16, 1989 have an initial 20-year term that must be renewed every 20 years after that.
3. Although the holder of a US copyright, trademark or patent may technically enforce these protections only within the US, he may stop foreign entities from importing infringing goods into the US. In this way, all three forms of protection can in fact affect the behavior of entities outside the US.
4. Although no maintenance fees are required for a trademark's initial term, renewals require a fee.
5. Extension of term may exist for certain products and methods that require federal regulatory review.
6. Where a work for which copyright protection is sought is a work made for hire (as defined in footnote 1, above) the applicant will be the author's employer, not the author. Other assignees can also apply for a copyright on works assigned to them.
7. Generally, the person who uses or controls the use of the mark, and controls the nature and quality of the mark's associated goods or services, is considered the owner.

Provisional Application for Patent

A Temporary Option

Understanding that the process of obtaining a utility patent can be daunting, the USPTO created the provisional application. This is an easy and inexpensive option for inventors who would like more time to make minor refinements, test, or even market their invention before filing a non-provisional application for patent. Often described as an optional first step in the patent process, a provisional application for patent allows you to claim an immediate filing date for your invention. Once filed, your provisional application is good for 12 months. In this way, the provisional application for patent can be a quick and affordable option for inventors who may apply for a utility patent in the near future, but may not be ready or able to file the non-provisional application for patent immediately.

Securing a priority filing date is critical because ownership rights go to the person who files first. A priority filing date serves as official evidence against anyone who attempts to stake a claim to your invention during your 12-month provisional period.

Many inventors use this time to assess their idea's commercial value, secure funding, or continue the patent process by completing and filing a corresponding non-provisional patent application. The low cost and high speed of a provisional application make it an ideal solution for inventors who want to evaluate their idea's market potential before undertaking the more involved non-provisional application process. A provisional application also legally entitles inventors to the label "Patent Pending," which can be helpful in warding off would-be infringers. Only those with provisional or non-provisional applications on file can label their inventions "Patent Pending."

Once filed, your provisional application is good for 12 months.

Apart from speed and cost, the main benefit of a provisional application is that it's much easier to file. While a non-provisional utility patent application undergoes a rigorous approval process, a provisional application is automatically accepted. Its primary function is to simply record that you've laid claim to your invention on a certain filing date. Think of it as a legal placeholder in the patent process. If you ultimately decide it's not worth the trouble and expense to patent your invention, you can simply choose to let your provisional application expire. (If, however, your invention has been published or "on sale" during the 12 months covered by your provisional application, you may permanently lose the ability to patent your invention if you choose to let your provisional application expire. For more information, visit <http://www.uspto.gov/patents/resources/types/provapp.jsp> under "Warnings.")

Key Features of the Provisional Application for Patent

- **Official priority filing date:** A filing date is conclusive evidence in the event of an ownership dispute: if you are the first to file, you are the owner.
- **Immediate "Patent Pending" status:** Because the provisional application for patent is a type of patent application, your invention can be marked as "Patent Pending" for the 12 months the provisional application is in effect.

- **Earlier priority filing:** If you file a non-provisional patent application before your provisional application expires, your non-provisional application (and any eventual patent) will retain the earlier provisional application priority filing date.
- **Less expensive filing fees:** A provisional application costs significantly less to file than a non-provisional application.
- **Fewer application requirements:** The provisional application has fewer required sections than a non-provisional application. Most notably, a provisional application does not require a claims section.
- **Longer overall patent term:** If a non-provisional application references an earlier provisional application filing date, your patent term is effectively extended by the amount of time between the filing of your provisional application and your non-provisional utility patent—up to 12 months. This extra protection puts US applicants on equal footing with foreign applicants whose US applications reference pre-existing foreign patents.
- **No lengthy review:** The US Patent and Trademark Office will accept a provisional application as long as it contains all the required sections and fees. You do not have to wait for an acceptance or rejection decision at this stage. Your invention immediately becomes “Patent Pending”. A formal review process begins only when you file a corresponding non-provisional application.
- **Privacy:** Unlike non-provisional applications, a provisional application for patent is not subject to any publication rule. The details of your provisional application are kept entirely confidential by the USPTO.

The low cost and high speed of a provisional application make it an ideal solution for inventors who want to evaluate their idea's market potential before undertaking the more involved non-provisional application process.

Scope of the Provisional Application for Patent

If you eventually decide to complete the patent process and want to take advantage of your earlier provisional application filing date, the subject matter in your corresponding non-provisional application must be adequately supported by your provisional application. In other words, it must be clear to the USPTO that both applications refer to the same invention. If there is a significant disparity between the two descriptions, the USPTO may decide that your provisional and non-provisional applications describe two different inventions. If this happens, you will lose your claim to the earlier filing date.

The Provisional Application Process

A provisional application for patent requires the following information

- Invention Title
- Description
- Drawings (not required, but advisable)

Key Features of a LegalZoom Provisional Application for Patent

- Completion and electronic filing of your application with the US Patent and Trademark Office
- Digitizing and color adjustment of your technical drawings
- Optional Comprehensive Patent Search (a report specific to your invention that details the relevant prior art in your field of invention)
- Optional Professional Illustration

Additionally, LegalZoom works with USPTO-registered patent attorneys and agents. You may choose to have your Provisional Patent Application drafted and reviewed by an attorney or agent from one of the participating law firms. This service includes drafting one independent claim and coordination of up to four (4) pages of technical illustrations.

Utility Patents

When inventors talk about patents, they are usually referring to a utility patent. Utility patents cover the most common categories of innovation – (1) machines, (2) manufactured articles, (3) processes or methods, and (4) compositions of matter. As the name suggests, utility patents are awarded to inventions that produce some sort of new and useful result (as opposed to design patents, which protect purely ornamental designs).

Does your Invention Qualify for a Utility Patent?

For your invention to qualify for utility patent protection, it must fall into one of the following categories:

- **Machines:** Generally composed of moving parts such as a clock or an engine
- **Articles of manufacture:** Generally contain a single part or several non-moving parts such as a hammer or an envelope
- **Processes:** Step-wise methods including software and methods of doing business¹
- **Compositions of matter:** Includes compounds and mixtures such as man-made proteins and pharmaceuticals

In addition to relevant subject matter, an invention must have:

- **Novelty:** It cannot have been invented by someone else prior to your application filing date
- **Utility:** It must accomplish some useful result
- **Non-obviousness:** It must not be obvious to one skilled in the art. In other words, if your invention can easily be assembled by someone with experience in the field by combining any previously-known components or referring to prior teachings, your application may be denied

¹Business method patents make up a particularly problematic area of patent law. Generally speaking, an inventor seeking to patent a business method should be prepared to show that the method produces a new and useful result and, more often than not, a tangible result effected through either a machine, by manufacturing an article or in the transformation of matter from one state to another. “Mere abstract ideas” and “processes for organizing human activity” are generally found not to be patentable or are later invalidated.

A Word About Prior Art

Most new inventions are developed using some measure of preexisting technology or information. Properly referencing this information is critical to the application process. In the patent world, “prior art” is the term used to describe any information that exists in the public domain at any time prior to the date of your invention or more than one year before your patent application date. It includes previously issued patents, publications, or models that have been built and tested, and general knowledge within the field of invention. Prior art plays a key role in determining whether or not your invention is ultimately patentable.

The Utility Patent Application Process

The utility patent application, also known as a non-provisional application, contains several required sections:

- Specification, contains subsections to include:
 - Title of the invention (in 500 characters or less)
 - Cross-reference(s) to related applications (provisional application(s) for priority purposes or if your application is a continuation of a parent application)
 - Background or field of the invention
 - Statement regarding federally funded or federally sponsored research and/or development, if any
 - A summary of the invention, including:
 - An explanation of problems the invention solves
 - A list of the invention’s benefits
 - Drawing(s) and brief descriptions of those drawings
 - Detailed description of the invention
 - Description of the “best mode” or preferred embodiment of the invention, as well as alternative ones, and the invention’s scope
 - Sequence listing, if necessary (biotech or computer programs)
 - Claim(s): The specific phrasing that states what the invention is and the extent of its scope. This section must be carefully drafted because it serves as a source of reference for conducting a prior art search and/or filing an infringement suit.
 - Abstract: A short summary of the specification (distinct from the summary, above).
- Information Disclosure Statement (a separate document submitted with the application): A list of what the applicant considers to be the “prior art” of the invention (see section on prior art above). These references are instrumental in helping the USPTO determine whether your invention meets the most challenging requirement for a utility patent—non-obviousness. Note: The USPTO will conduct its own prior art search and check it against yours.
- Oath or declaration stating you believe you are the original and first inventor of the subject invention of your patent application, along with your country of citizenship.

Utility patents are awarded to inventions that produce some sort of new and useful result

The Review Process

It typically takes 1 to 3 years for the USPTO to fully review a utility patent application. This includes the USPTO's prior art search and all correspondence between the USPTO examiner and either you or your attorney regarding any necessary revisions to the application. This level of scrutiny is required to ensure that the government does not award a monopoly to a non-innovation. While your application is being reviewed, you are free to market your invention as "Patent Pending." (Please refer to the "Warnings" section regarding inventions that are "in use" or "on sale" at <http://www.uspto.gov/patents/resources/types/provapp.jsp>. If you market your invention while your application is pending, and you need for any reason to abandon your application and re-apply, you could encounter problems with your later application.) If your application is eventually approved, the USPTO will send a Notice of Allowance and Fee(s) Due, which must be paid within 3 months of the date that the USPTO mails your Notice of Allowance. This period is non-extendable and non-payment of required fees within this period will result in your application being abandoned.

Utility Patent Term and Maintenance

On newly filed applications, the patent term typically lasts 20 years from the application filing date. However, if you previously filed a provisional application for patent, your protection will be backdated to the filing date of your provisional application, thereby effectively getting you more than 20 years' protection for your invention. To maintain your patent, fees are due 3½, 7½ and 11½ years after the patent grant date. Once the patent term expires, your invention becomes part of the public domain.

LegalZoom Utility Patent Services

LegalZoom offers Utility Patent Services in two steps. Utility Patent Step 1 includes an attorney consultation and professional patent drawings for your invention. Utility Patent Step 2 includes a utility patent application preparation and filing by a USPTO-registered patent attorney or agent.

Key Features of LegalZoom Utility Patent Step 1 – Preliminary Assessment & Drawings

- A consultation with a USPTO-registered patent attorney or agent
- Technical drawings of your invention by a professional illustrator
- Optional comprehensive search for patents similar to your invention

Key Features of LegalZoom Utility Patent Step 2 – Application Filing

- A consultation with a USPTO-registered patent attorney or agent
- Preparation and drafting of a non-provisional patent application, including up to 5 pages of specifications, 10 claims (up to three independent claims), and an abstract and information disclosure statement
- Electronic filing of your application

For more complex inventions that require additional claims, pages of specifications, and drawings as part of the application, an Enhanced Patent Preparation package is available for an additional fee.

Design Patents

Design patents protect new and non-obvious ornamental design for useful articles. Unlike utility patents, design patents protect only the appearance of an article rather than its structural or functional characteristics. Design patents have a much narrower scope of protection than utility patents. Ineligible design patent subject matter includes unoriginal design (such as designs modeled on naturally occurring or well-known objects or people) or material considered offensive to any race, ethnicity, religion or nationality.

Design Patents vs. Copyrights

Design patents are used to protect the ornamental design of a useful article, such as the appearance of a music box. In contrast, copyrights are used to protect most types of visual, literary, performing and auditory works. These include things like books, sculptures, photographs, films, sound recordings, paintings and architectural plans. The key difference between a copyright and a design patent is that the artistry protected by a design patent typically accompanies a manufactured item, whereas the expression protected by a copyright typically stands alone as a creative work. In some cases, the ornamental design of a useful article will contain enough originality to qualify for both design patent and copyright protection.

Deciding between Utility and Design Patent Protection

Utility patents protect an invention's functionality. Design patents protect how an invention appears. A manufactured article that contains both utility and ornamental design could conceivably qualify for both forms of patent protection. Generally, if the design of the article is informed primarily by its function—that is, the invention cannot work the same way if it features a different design—then it will most likely qualify for a utility patent alone, rather than a design patent or both types (assuming all utility patent qualifications are met).

For example, a design patent application would claim a particular chair's aesthetic appearance, while a utility application would typically claim the technology of the chair itself (e.g. "all devices built with up to four legs, a seat of varying size, with or without a chair back, to be used for the purpose of support").

A design patent protects your design for 14 years from the date of issue. There are no maintenance fees for design patents.

The Design Patent Application Process

The design patent's relatively limited scope results in a much simpler application process. It also rules out a provisional application as an option —you simply apply (non-provisionally) with a design patent application from the start. Your completed application must contain clear drawings with a sufficient number of views to demonstrate the appearance of your claimed design. If relevant, you should also disclose any prior art references used in the design.

Elements of the Design Patent Application

- **Preamble:** Includes the applicant's name, title of the design, and a brief description of the nature and intended use of the design
- **Cross-reference(s):** Any cross-references to related applications must be stated
- **Statement of federal sponsorship:** If applicable, a statement of federally sponsored research
- **A Single Claim:** it must be composed in standard sentence format (no more than one claim is allowed)
- **Drawings or photographs:** Exclude reference numbers
- **Short Specification:** It includes a description of the drawing figure(s) (i.e., what view each drawing represents, such as “top” or “elevation view”) and features.
- **An oath or declaration:** It must state that you believe yourself to be the original and first inventor of the claimed design and your country of citizenship

The design patent's relatively limited scope results in a much simpler application process.

Key Features of LegalZoom Design Patent

- A consultation with a USPTO-registered patent attorney or agent
- Professional preparation of your design patent application
- Technical illustrations from up to seven viewpoints
- Electronic filing of your application with the USPTO

Need help searching for prior art? A Gold Design Patent Package is also available which includes a comprehensive patent search. This search can help you determine whether or not your invention is truly new, and also provide the required prior art references for your design patent Application.

Plant Patents

Plant patents are far less common than either utility or design patents. They are designed specifically to protect newly discovered or invented varieties of plants that can be asexually reproduced.

Key Features of the Plant Patent

- **A two-part definition:** (1) Discovery or selection step and (2) asexual reproduction step
- **Plurality of inventors:** An inventor can be any person (including staff members) who contributed to either step of the two-part definition (see above).
- **20-year patent term:** Begins on the date of the grant
- **Exclusive propagation rights:** The right to prevent others from asexually reproducing, selling or using your patented plant.
- **Single plant, single patent:** A plant patent is limited to one plant or genome. A sport or mutant of a claimed plant can be separately patented.

The Plant Patent Application Process

A plant patent application has the same requirements as a non-provisional utility patent application, and one additional requirement: a plant color-coding sheet. The specification for a plant patent application should include:

- Title of the invention
- Latin name of the genus and species of the claimed plant
- Variety denomination
- Background of the invention, including the field and relevant prior art
- Summary of the invention
- Drawing(s) and brief description(s)
- Detailed and reasonably complete botanical description of the plant, including distinguishing characteristics over related known varieties, your plant's antecedents, etc.
- A single claim
- Abstract

For more information on plant patents, refer to http://www.uspto.gov/patents/resources/types/plant_patents.jsp.

Generally speaking, few inventors attempt to file a plant patent on their own. If you are interested in patenting a new variety of plant, it's best to seek the assistance of an attorney who specializes in this area of patent law.

Plant Patent Application

LegalZoom does not currently offer any patent-related services for plant patent applications. However, LegalZoom works with USPTO-registered attorneys who may be able to help with your plant patent legal needs. For more information, please call us at 888-791-0227.

Questions?

Call us at (888) 791-0227

Great ideas happen every day. But an idea is only as good as your ability to present and protect it.

Securing the rights to your original invention doesn't have to be complicated or costly. LegalZoom can help you protect your invention through a variety of easy and affordable patent services. We can help you perform a prior art search and assemble and file your application with the USPTO — even get you the help you need with your technical drawings. Just give us the details.

To get started, visit www.legalzoom.com or call. Our customer care team is available to help you Monday – Friday 5:00 AM – 8:00 PM PT, Saturday – Sunday 7 AM – 4 PM PT.

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