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PROTECTING INVENTIONS, METHODS, APPRATUS AND PROCESSES

A GUIDE FOR START-UPS

Patents

by Ellis Terry

Patents can provide broad protection for new technologies, apparatus, processes, methods and even certain software.

Protection

The scope of protection is defined by “claims” at the end of a patent. These set out the features that must be present to infringe the patent. What is actually claimed may be quite different to what seems to be covered in the detailed description of the invention.

Requirements

To be patentable, an invention must be:

- New
- Not-obvious to someone skilled in the technical field to which the invention relates.
- Useful (usually a given)

To be new an invention must not have been published, used or sold prior to the date that a patent application is filed (anywhere in the world!)

To not be “obvious” there must be something taking the innovation above what would be expected by an ordinarily skilled person applying standard methods and techniques.

Ownership

The inventor is the owner of an invention in the first instance. If the inventor is an employee and the invention was produced during the course of employment and relates to a field that the inventor was employed to develop in then the invention will belong to the employer. Parties can agree to transfer ownership of patent rights in any manner they choose.

Infringement

A patent is infringed when a product is produced or a method is carried out that falls within the wording of a claim of a current patent. In such a case the patent owner can prevent the production of any further products and obtain damages for any loss they have suffered.

No damages are payable where the infringer was not aware of the existence of the patent and there was nothing indicating the existence of the patent (e.g. markings).

Term

The term of a patent in New Zealand is 20 years provided all renewal fees are paid.

The law is becoming harmonized so that most countries provide a 20-year patent term.

Foreign Protection

Most countries allow applicants to claim priority to an earlier foreign application filed within 1 year. There is no such thing as a “global patent”, but the Patent Cooperation Treaty (PCT) provides a vehicle to file patents in multiple countries and extends the major patenting costs by 18 months.



Pro-Tips

1. Do not to publish, publicly use or sell an invention before a decision has been made as to whether a patent is to be proceeded with.
2. Before R&D, search for any patents which may block the development. Such searches may avoid “reinventing the wheel” and may also provide useful material to develop on.
3. Patented products should be marked with the patent number to ensure that a defence of innocent infringement cannot be maintained.