

PATENTS

1. What is a Patent?

A patent for an invention is a legal right granted by the government. It allows you to stop other people from using your invention during the life of the patent.

2. What is an Invention?

Patents cover all fields of technology. Basically, an invention is something which is new and is not obvious. It must be technical, but it does not need to be complicated or high tech. An invention can be many things, including a machine, device or any kind of mechanical, electrical or electronic product, a chemical substance, a biotechnological product, or an industrial process.

Some things, although new, cannot be patented. This is usually because they are not technical or they do not have a use in industry. For example, an oil painting, a method of fortune telling and a method of selling insurance are all examples of things which cannot be patented.

3. What is meant by New?

New means that the invention must not be known previously anywhere in the world. If the invention has been published or made public in any way before the patent is applied for, then the patent right generally cannot be obtained. So, you should plan and budget for patenting early on in order that your patent application can be submitted before any publication, advertisement, sale, public demonstration or use of the invention occurs.

In Malaysia, a patent can be applied for up to one year after the first disclosure of the invention by its owner. The invention will still be treated as new and therefore patentable. However, such disclosure will normally prevent you from obtaining patents overseas.

4. What is meant by Inventive Step?

In addition to being new, an invention must involve what is known as an inventive step. This means that the invention must be something more than a trivial or obvious modification of the existing technology. It does not mean that the invention needs to be ingenious or complicated. In fact, many patentable inventions are based on simple ideas, such as small yet advantageous improvements to existing products or processes.

5. How do I obtain a Patent for an Invention?

In order to obtain a patent, it is necessary for the owner of the invention to file a formal patent application with the Patent Registry. The invention must be described and defined in a document known as the specification. The specification includes a description and drawings of working examples of the invention, as well as a set of claims that defines the invention to be protected. 18 months after filing your patent application, the specification becomes a public document - anyone can obtain a copy of it and learn about your invention. However, provided the patent is granted, you may be able to claim compensation for use of your invention by third parties while the application was pending.

Among other things, the patent application will be searched for newness and examined for inventive step by a patent examiner. Normally various objections will be raised that need to be replied to by way of amendment of the specification and/or argument. After that stage, provided the examiner is satisfied that the application meets the requirements of the Patents Act, a patent will be granted to the owner.

6. What is a Utility Innovation Certificate?

This is a registration like a patent that protects what is called a utility innovation instead of an invention. A utility innovation is a lower level invention. It must be new, but there is no requirement for inventive step. The specification is restricted to only one claim. The term of protection is up to 20 years, but renewal after 10 years is dependent upon use in Malaysia, or satisfactory explanation of non-use.

7. Who is entitled to apply for a Patent?

Only the owner of the invention, whether an individual or a company, can apply for a patent. You can never patent someone else's invention.

8. How long does a Patent last?

Once a patent has been granted, a renewal fee must be paid to the Patent Registry every year to maintain the protection. The maximum life of the patent is 20 years from the initial filing date.

9. What Territory does a Patent cover?

A Malaysian patent has effect only in Malaysia. To obtain protection in other countries, it is necessary to apply for separate patents in those countries. There is no such thing as world patent. However, there are international agreements that allow you to defer the costly procedure of applying for patents overseas for between 12 and 30 months from your original Malaysian filing date.

10. What Protection does a granted Malaysian Patent provide?

The scope of protection is defined by the claims contained in the specification. If the claim defines a product, the patent is infringed by making, importing, selling or using the defined product in Malaysia. In the case of a process claim, the patent covers using the defined process in Malaysia, and doing in Malaysia any of the above-mentioned acts in respect of a product obtained directly by means of the process.

11. How do I enforce my Patent rights?

The Patent Registry or Police cannot enforce your patent for you. You must take action against infringers yourself by having a lawyer start proceedings in the High Court. Fortunately, most patent disputes can be settled by agreement between the parties without the need for such legal action.

12. What is the role of a Patent Agent?

A patent agent is a professional who specialises in patents. A patent agent represents you before the Patent Registry, so that you do not need to worry about the complexities of the patenting process. Only qualified and experienced individuals are listed in the official government register of Patent Agents.

A patent agent advises on whether an invention is potentially suitable for a patent, writes the specification to meet the exacting legal requirements and to obtain the best protection for the invention, and handles technical objections raised by the Patent Registry in the process of having the patent granted.

Since patents are obtainable only on a country-by-country basis, a patent agent is also familiar with the requirements and procedures of patent filing overseas. The patent agent will work closely with foreign associates to obtain patent protection for you in other countries of interest.

He or she may also advise generally on how to use your patent once it is registered, for example by means of licensing. In addition to their expertise in patents, patent agents are knowledgeable in related areas of law such as designs, copyright and trademarks.

Professional ethics ensure that all the details of your invention that you give to a patent agent will always be treated in strictest confidence.