

A White Paper Discussion on Patents¹

What is a patent?

A patent is a grant from a government that confers upon an inventor the right to exclude others from making, using, selling, importing, or offering an invention for sale for a fixed period of time.

What Rights a Patent Grants and the Value of a Patent?

The patent grant gives its owner—one or more individuals, a partnership, corporation, or other entity to which an inventor has “assigned” (legally transferred) the invention—the right to file, maintain, and recover in a lawsuit against any person or legal entity (infringer) who makes, uses, or sells the claimed invention, or an essential part of it. If the patent owner wins the lawsuit, the judge will issue an injunction (a signed order) against the infringer, ordering the infringer not to make, use, or sell the invention any more. Also, the court may award the patent owner damages— money to compensate the patent owner for loss due to the infringement. The amount of the damages is often the equivalent to a reasonable royalty based on the infringer’s sales.

In addition to possibly earning licensing income, patents also have other uses. Some organizations obtain patents simply to assert them as a defense against any company that charges the organization with patent infringement.

Since the patent defines the invention monopoly very precisely, the patent owner can use the patent only against supposed infringers who make, use, or sell things or processes that fall within the defined monopoly. This means that not everyone who makes something similar to the invention will be an infringer; one can validly sue only those whose products or processes fall within the scope of the claims in the patent.

In addition to its above-described use as an offensive weapon, a patent also provides a prior-art reference that will block others from getting a patent on anything disclosed in the patent.

How Intellectual Property Law Provides “Offensive Rights”

Many people speak of a patent as a form of “protection.” The fact is that, as stated, a patent is an offensive weapon, rather than “protection,” which is a defensive shield. To properly benefit from a patent, the patent owner must sue or threaten to sue anyone who trespasses on the right. The patent doesn’t provide any “protection” in its own right and does not give its owner a defense if the inventor infringes an earlier patent. Although the word “protection” is in common usage for all types of intellectual property, it’s more accurate to say that a patent—as well as a copyright, trade secret, and trademark—gives its owner “offensive rights” against infringers. In other words that patent, copyright, trade secret, or trademark provides a tool with which you can enforce a monopoly on your creation.

¹ By patent attorney David Pressman, ***Patent It Yourself*** 12th edition, copyright 2006.

Enforceable Monopoly Against Manufacture, Use, Sale, Offer for Sale, Importing, Etc.

The grant of a patent gives the inventor to whom was "assigned" (legally transferred) the patent a monopoly on the invention *defined by the claims of the patent*. The monopoly begins with the patent's date of issuance and expires 20 years (plus any extension granted by the PTO), from the date the application was filed (or the first application in the chain if your patent issued from a division, continuation, or continuation-in-part).

The monopoly gives one the right to bring a valid suit against anyone who does any of the following, among others, during the term of your patent:

1. Makes, uses, offers to sell, sells, or imports the invention defined by the claims of your patent.
2. If the U.S. patent covers a process, imports a product made abroad by the patented process.
3. Induces infringement of your patent.
4. Offers to sell, sells, or imports a material component of the patented process made especially for use in infringement of the patent and not a staple article of commerce with substantial non-infringing use.

One can use ownership of the patent to obtain value in any of four ways:

1. Sell the patent outright.
2. License other to make, use, and/or sell the patented invention in return for royalties under a variety of conditions, subject to the antitrust laws mentioned in the note below.
3. Use the patent to create a monopoly by preventing anyone else from making, using, or selling the invention.
4. If accused of patent infringement, one may be able to assert the patent against the other patent holder and generate a cross-licensing arrangement to avoid paying royalties or having to stop infringing.