

Patents



Patent Protection

What is patent protection?

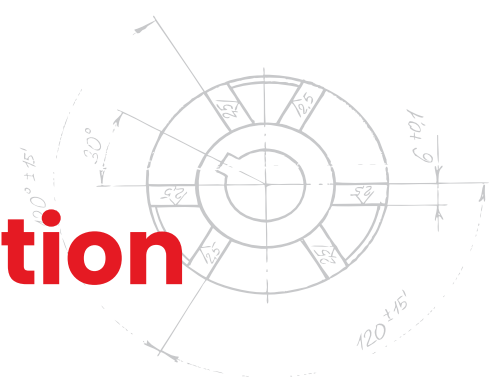
A patent can stop others producing, importing or selling goods which contain any patented element or are made using a patented process.

Patent applications can be made for new and innovative products or processes which meet certain requirements.

They provide the owner with the right to stop others using or selling the invention without permission and seize stock and/or claim damages from infringers.

Having a pending patent application – even before it is granted – also deters competitors. The date of the application (not the eventual grant) is the priority date against which the invention will be judged.

UK patents provide protection in the UK only but they also provide a 12 month window for maintaining the filing date on further applications in countries all over the world. There are options for speeding up or slowing down the process through to grant if commercially desirable.



Why is patent protection important in healthcare?

Developing new medical technologies, drugs and digital health solutions can be expensive and time consuming.

One of the reasons for the IP protection system is to allow economic reward in exchange for sharing an invention with the world.

Securing a monopoly on e.g. the exclusive rights to an invention for 20 years with a granted patent can recoup investment costs and provide funds for further useful new developments and treatments.

Patents can also be licensed, providing a further route of revenue potential as well as allowing the owner to exploit lucrative tax incentives such as the Patent Box.

Having IP protection in place further provides potential commercial partners and licensees with the confidence to invest money in developing new products and services.

Not protecting new developments with IP may allow others to make financial gains from these instead, reducing the opportunity to channel finances generated from these very useful sources of funds to desired organisations. Protecting IP is valuable and benefits patients and staff alike, as well as organisations as a whole.

Patent Protection

What is the process?

Optionally, prior to filing, **conducting a novelty search** for the same or similar inventions to yours in the public domain can help optimise your application.

This is separate to a **freedom to operate search** which may also be carried out to identify existing competitors' rights.

An initial application is prepared and filed to secure a priority date. The patent application system is very complex and it is highly advisable to instruct a patent attorney to draft and file applications for you. Patent applications include:

- The detailed **Patent Description** - describing how your invention works; and
- A set of **Patent Claims** - which are carefully worded legal statements outlining the monopoly sought

In the UK, the patent application is submitted to the UK Intellectual Property Office (IPO) who provide a filing date and application number. You can then describe your product as 'Patent Pending'.

Patent Pending

Whilst the patent is pending, Search and Examination Reports are received from the IPO detailing any objections found, with a deadline for response. This may happen several times while your professional representative negotiates, with your help, the scope of any eventual protection.

Patent Granted

The patent application is published 18 months after it's filed. Once a set of claims is agreed by the IPO, they will then grant and issue the patent. You can then describe your product as 'Patented in the UK'.

Excluded areas in patenting?

There are challenges in the current law regarding patenting software or computer-based inventions.

However software is only excluded to the extent that it is claimed 'as such' and many software inventions may meet the required criteria if they have technical character.

There are other areas excluded from patentability in the UK such as naturally occurring biological processes, scientific theories, mathematical methods and business methods 'as such'.

An experienced, qualified patent professional will be able to discuss the options with you in confidence.

Trade Secrets/Confidential Information

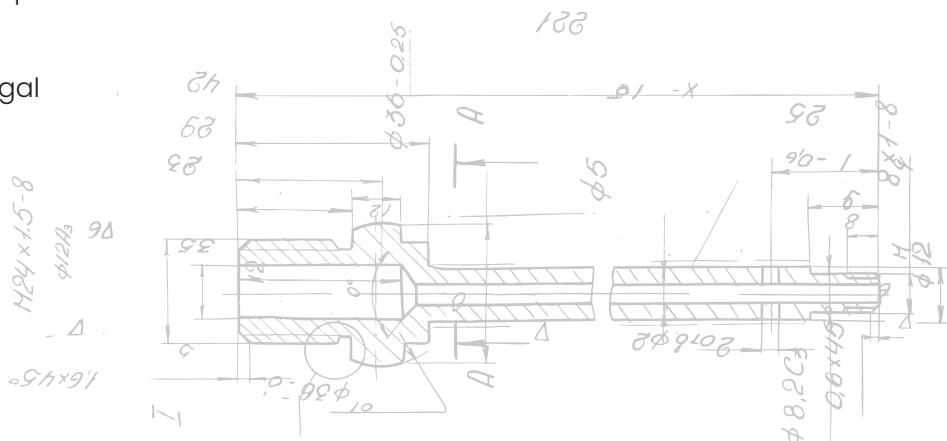
Some people adopt a strategy of keeping information confidential (known as 'Trade Secrets') instead of applying for formal IP protection.

There are pros and cons to this approach. A successfully maintained Trade Secret has potentially more longevity. However, if there is a chance of the work being disclosed or a possibility of the secret element being reverse engineered somehow, then this may be a risky choice.

Think very carefully about if this is appropriate for your work and seek advice from an IP professional.

Keeping your invention confidential

Confidentiality is vital prior to filing a patent application in most countries (including the UK). This means that disclosing details of an invention before filing a patent application will very likely stop you ever getting it granted in most territories.



International Patent Applications

International patent applications

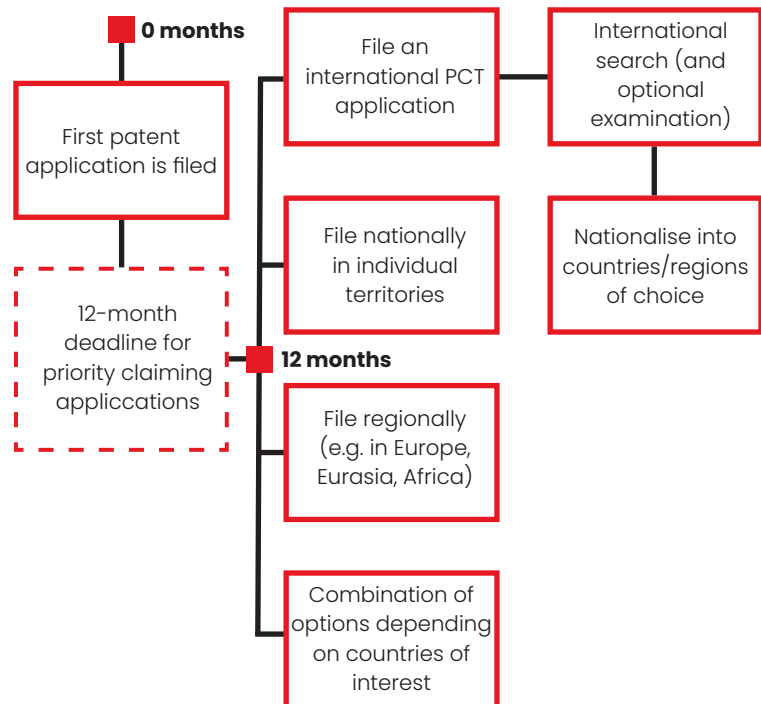
A patent is only enforceable in countries where it is registered and different territories around the world have their own patent application systems and requirements.

Filing a first patent application in any territory immediately sets off an application process involving multiple time-limited tasks, including a **strict 12 month 'priority' period** within which you are allowed to apply to protect the same content in other countries. Making use of this priority period also affords those subsequent applications benefits of the first filing date.

Different routes are available for filing abroad, including filing applications directly with individual countries.

Multi-country filing systems also exist. For example, a European patent application initiates an application process across Europe. A PCT application initiates the filing process in most countries around the world at once. It would later need to be decided in which countries to pursue a granted patent. An IP professional can help to determine which may be the best route in each case.

The timeline presented is a simplified version and should only serve as a reference. We can assist with developing your international filing strategy.



Key Takeaways

- Patents can be valuable assets that allow exclusive rights to an invention – marketing them can be used to recoup costs and help to support vital future research.
- Disclosing information about an invention could stop it **ever** being eligible for a patent – with no retrievable rights. If you're not sure – err on the side of caution and seek advice before sharing any information about the invention in any form.
- It is always easier to agree terms regarding IP with collaborators or investors in advance, to avoid misunderstandings or leaving you exposed. This can help guard against avoidable and costly disputes, maintain relationships and enable you to focus on developing your ideas rather than unnecessary issues.
- If you're not sure, talk to an IP professional about it.

