Patent Law

The Q and A of Intellectual Property
Presented by:
What Does Patent Law Protect?
With the exception of trade secrets, patent law is the only form of intellectual property protection that protects the underlying idea. Patent and trade secret law are sometimes considered two sides of the same coin. If your invention is easily reverse engineered, then you may want to consider patent protection. On the other hand, if it would not be easy for a competitor to figure out how your invention works, then you may also have the option of treating it as a trade secret.

What Kinds of Patents Are There?
There are three kinds of patents—utility patents, design patents, and plant patents. Plant patents protect new varieties of asexually reproducing plants. Design patents protect things that are ornamental or aesthetic (in this respect, the protection they afford is similar to copyright). Utility patents are what most people have in mind when they think of a patent. Utility patents protect the invention—which may be described as a system, an apparatus, a method or a composition—as encompassed by a set of written claims. These claims are based on the written description (specification) and drawings submitted as part of the application.

When and by Whom Must a Patent Application Be Filed?
The United States is now a first-inventor-to-file patent system. Although the persons filing the application must be the actual inventors, they also must be the first to file a patent application for the invention in the U.S. The date of invention is no longer relevant to determine who has the right to file, although these records may serve to prove that someone is an inventor. It is not legal to take someone else’s idea and attempt to patent it (this is called “derivation”), nor is it legal to omit an inventor from a patent filing. Inventorship and ownership are not the same thing; for example, a patent application may list several inventors but only one applicant or owner. A patent application in the U.S. must be filed within one year of the date of first public disclosure. Most foreign countries, however, are absolutely novelty jurisdictions, which means that there is no one-year grace period. In these countries, the patent application must be filed prior to any public disclosure of the invention.

How Long Does a Patent Last?
A patent lasts for twenty (20) years after the date of filing, plus any additional days added to the patent term as a result of patent term adjustments. Patent term adjustments are calculated on the basis of delays on the part of the patent office during the patent examination process.

What Do I Do With My Patent Once I Have It?
You do not need a patent in order to sell a product; however, a patent allows you to prevent others from making and selling the patented product (or engaging in the patented process). Once you have a patent, you can make and sell the invention, license your patent rights to others, or sell the patent outright. The latter option is referred to as a patent “assignment.” A license is when you give someone else the right to make and sell the invention, but you retain the ownership rights. A license typically includes royalty payments, which may be one-time or ongoing. Licenses may be restricted in terms of territory, market and/or time.

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How Small Businesses Are Infected

Ransomware is a form of malware that encrypts a victim's information and holds it for ransom. It is often designed to spread across a network and target all critical information, and can quickly paralyze an entire small business. It is a growing threat, generating billions of dollars in payments to cybercriminals and inflicting significant damage and expenses for businesses and governmental organizations.

How To Protect Your Small Business

Phishing
Clicking on links or opening attachments from attackers in emails.

Unsecure Websites
Visiting nonsecure, compromised websites can download malware.

Outdated Software
Old, unmaintained software may have vulnerabilities attackers can leverage.

The Typical Attack Process

1. Cyber criminals gain admin access using above attacks
2. Your network is explored to locate and steal critical data
3. All backups and protections are destroyed
4. All data is encrypted and you are locked out
5. A ransom request is sent, with offer to unlock data
6. Cyber criminal receives ransom or data is published

Backups -
If your data has been encrypted and your backups are deleted, you are left with few choices. Paying the ransom and getting the key does not guarantee that your data remains intact and usable. Make your own encrypted backups daily. Consider how to isolate them to prevent deletion or destruction.

Sensitive Data -
Understanding what data you collect is just as important as protecting it. Determine if you actually need to collect all the data you have. Then make sure the data is encrypted and access to that data is tracked.

Network Segmentation -
Nothing makes an attacker's job easier than a network where every system is accessible with one login, and there isn't any internal monitoring. Make sure you setup a network where only the systems that need to talk to each other are connected. Placing firewalls around critical data can help protect it from unwanted visitors.

Access Control -
When an attacker gains access to your network, their primary goal is to gain administrative access to all systems. Typically the bulk of their work is performed in a semi-automated fashion using special programs that require administrative rights. Adding Multi Factor Authentication administrator logins can slow or stop their efforts.

Patching & Updating -
When a new update is released for software that patches a vulnerability, attackers immediately begin scanning the internet for vulnerable systems to exploit. While it may not be practical to patch instantly when an update is released, timely updates can reduce the chances of your system being compromised.

Is It Possible To Protect my Invention Internationally?

Yes. The Patent Cooperation Treaty (PCT) is an international treaty applicable to utility patents. It provides a mechanism by which inventors may be “patent pending” in all PCT member countries before they have to enter the national stage. Alternately, an inventor may file a patent application directly in a foreign country without using the PCT system. Advantages of the PCT system are that (i) it affords inventors a period of time in which to evaluate their foreign markets to determine whether to invest in national stage filings and (ii) inventors will receive an International Search Report and Written Opinion, which is advisory and non-binding, but which provides an indication as to whether the invention is likely to be deemed patentable in the designated countries.

Although various factors are taken into consideration in determining an appropriate filing strategy, one common strategy is to file a U.S. nonprovisional application first, file a PCT application one year later, and then enter the national stage in foreign countries eighteen months after the PCT filing date. Design patents are governed by the Hague System, which is an international registration system for designs. For further information on the Hague System, please visit:  http://www.teaselaw.com/newsletter/2016_july.html.

What Is Patent Infringement?

The scope of a utility patent is determined by the claims. The claims define in words what the invention is and what the inventors own. The scope of a utility patent is not defined by the abstract, the drawings, or even the written description. These parts of the application are consulted only if there is an ambiguity in the claims. In order to determine whether someone has infringed a utility patent, it must be proven that the accused infringer met all of the requirements (referred to as “elements” and “limitations”) of at least one claim in the patent. A patent typically has multiple claims. When the validity of a patent is challenged, the validity of the patent is assessed on a claim-by-claim basis.