

HOW TO PROTECT YOUR INVENTION

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Well, you have an **invention**, the result of your hard work – so many hours of thinking, making models and experimentation etc. etc. Could somebody ROB your invention and make money out of it while you are left in the lurch. Yes, definitely, if you are not careful enough.

Then how can you **protect** your invention? Fortunately we have '**PATENT**' protection under the '**Intellectual Property Act**' for your invention. Well, what is this '**Intellectual Property**'?

Let us start by considering the meaning of '**Property**'. The owner of a property is free to use it as she/he wishes, provided the use is not against the laws of the country, and the others are excluded from using that item of property without the consent and the agreement of the owner. The term "**Intellectual Property**" is reserved for types that result from creations of the human mind, the intellect.

Well what are the areas covered under this intellectual property act? There are SIX areas.

- 1) Literary, artistic and scientific works e.g. books etc. – covered under **Copyrights**.
- 2) Performances, broadcasts etc. e.g. concerts, dramas etc. – covered under **Related rights**
- 3) Inventions e.g. like what you have, say a novel device etc. – covered under **Patents**.
- 4) Industrial designs e.g. Shape of a commercial item –say a soft drink bottle

– covered under specialized laws, or those of Industrial property or Copyright.

- 5) Trademarks, service marks and commercial names and designations e.g. logos or names of products – covered under **Trademark**.
- 6) Unfair competition, e.g. false claims against a competitor, imitating a competitor etc. covered under those of intellectual property.

We are interested only on our invention here, i.e. '**Patents**'. So let us see what a patent is.

Patents are one of the oldest forms of intellectual property protection and the aim of patent system is to encourage economic and technological development by rewarding intellectual creativity. The purpose of a patent is to provide protection for technological advances (inventions). It provides an award for the disclosure of the **creation of something new** as well as for the **development, or refinement, of existing technologies**.

What sort of things can be patented? By international agreement, patents are available for inventions in all areas of technology. Almost anything, if it has industrial applicability, can be patented. For example a chemical compound, a machine or a device, process for developing or making things, can be patented. Indeed there are only a few things that cannot be patented, and these are included among the exceptions. Human genes, for instance, cannot be patented. Things that already exist in nature, with a very few exceptions, cannot be patented. Things which go against the laws of nature, say a perpetual motion machine, cannot be patented unless someone can show it working. (Then of course those old rules (or laws) are set aside and something new is created).

Patents are intended not only for major breakthroughs of technology, but also for small

technological increments e.g. development of LASER a major breakthrough, or a very small improvement which makes a device operate better, **provided that the improvement is novel.**

What is this Novelty? To be patentable, an invention must also meet certain criteria relating to 'Novelty' and other features. There are several characteristics the patent office will look at to whether the invention is patentable. First of all there has to be a patent application on file. In most cases that application will be examined by a technical expert to ensure that it meets the substantive criteria for patentability. There are three main criteria. They are;

- 1). The invention must be **New or Novel**, meaning that the invention must never have been made before, carried out before or used before.
- 2). There **must have been an inventive step**. In other words it must represent a **sufficient advance** in relation to the state of the art before it was made. The term "**non-obvious**" is also used: if it was obvious for a person of ordinary skills in the field concerned, it would not be considered qualifying for patent protection.
- 3). Invention should be **industrially applicable (or useful)**.

Protection provided under patent law does not necessarily require that the invention be represented in a physical embodiment. However it must not fall into any categories of exceptions or exclusions found within the applicable national or regional law. Such common exceptions are:

- i. Scientific theories or mathematical methods,
- ii. Schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games,
- iii. Methods of medical treatment for humans or animals or diagnostic methods (but the products used in diagnosis could be patented).

What are the benefits a Patent confers? For the period of the patent the patent holder may exclude others, in the territory covered by the patent, from making, using and selling the invention claimed in the patent. The term of patent is typically 20 years from the date on which the application was filed. However it is the patent holder that must seize the initiative in the face of potential infringement. Detection of potential, or actual infringements, and bringing those to the infringer's attention rests exclusively with the patent holder.

The protection you get is for what you claim in your application. If you do not word your application proper, particularly the claims, a cunning fellow may use your information itself to get another patent. So you have to be very careful. You must disclose sufficient information to grant patent, but have to be very careful not to over disclose. Patent drafting is a specialized field, particularly in the drafting and the wording of claims you have to be extremely careful. So it is important to get your patent application drafted by a professional.

Well, who can draft your application for you?

One important advice, it is **NOT the Lawyers** who can draft it. It has to be a person or organisation **with relevant technical knowledge in the field (of invention)** and with required knowledge and experience of drafting such patents.

From where can you get such service?

You are lucky that now the University of Moratuwa is offering such professional service to you at a very nominal charge, through its "Inventors and Innovators Society". Please contact the President or Secretary of the "University of Moratuwa Inventors and Innovators Society" (UMIIS). Further good news, the UMISS is arranging to conduct a seminar for inventors and innovators in this regard as well as commercialisation or exploitation of your invention. If you are interested in attending same please contact the Secretary UMISS.