



Delivering Solutions Since 1974

PATENTS OCTOBER 2009

What is a Patent?

A patent is an intellectual property right entitling the holder of the patent to exploit an invention.

An “invention” is not specifically defined but encompasses a product, process or method which has the characteristic of providing a “new” way of doing something, or offers a new solution to a problem.

The *Patents Act 1990 (Cth)* sets out certain benchmarks which must be met before an invention can be patented – these benchmarks stipulate the device, substance, method or process must not only be new but must also be “novel, inventive and useful”.

Application & Examination Process

Patents in Australia are administered by the Patent Office of IP Australia, a Federal Government organisation.

Patent protection is not automatic. An application in the approved form must be filed with IP Australia.

There are two types of patents in Australia:-
standard patent; and
innovation patent.

Once an application is received it is examined by the Patent Office to determine whether the invention can be patented. What is involved in the examination is determined by the type of patent applied for - whether standard or innovation.

Fees

There are various initial and ongoing fees charged by IP Australia in respect of the patent application and grant.

Duration of Patent Protection

Patents, once granted, normally last for 20 years (for standard patent) and 8 years (for an innovation patent).

Once a patent expires, the protection ends and the invention enters the public domain, i.e. the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.

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Patent rights

Patent registration provides its holder with a legally enforceable exclusive right to commercially exploit the invention for the duration of the patent. This means that an invention cannot be commercially made, used, distributed or sold without prior approval from the patent owner.

Rights granted to a patent owner include:-

(i) Usage

A patent owner has the right to decide who may or may not use the 'patented invention' for the period in which the invention is protected.

(ii) Licence

The patent owner may grant permission, or licence another party to use the invention on mutually agreed terms.

(iii) Sale

A patent can also be sold to someone else, who will then become the new owner of the patent.

International

There is a separate patent application process for international protection, which will vary depending on the country.

Conclusion

The patent application process is quite complex and should not be entered into without proper advice.

Raymond Duffy, Associate, Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Raymond may be contacted on 5499 3622 between 8.00am to 5.30pm Monday to Friday or email rduffy@quinnscattini.com.au. Alternatively you can contact James Chai, Solicitor - jchai@quinnscattini.com.au

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