



ROCKING IN
GETTING YOUR PATENT APPLICATION ALLOWED

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**By: Andrew Abramson, Esq., Patent Attorney
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Introduction to Intellectual Property

Intellectual property is a valuable asset for any company. Often, the only way a small business can compete with the Goliaths of the world is through their intellectual property. Intellectual property takes many forms, such as copyrights, trade secrets, trademarks, and patents.

Copyrights protect works of expression expressed in a tangible medium, such as an artist's painting on a canvas or a musician's song lyrics written on paper. Copyrights protect the copying of the work of expression and so if two people create very similar paintings independently, no copyright infringement has occurred. Copyrights include several rights, such as a right to produce copies or reproductions of the work and to sell those copies, a right to import or export the work, a right to create derivative works, a right to perform or display the work publicly, a right to sell or assign these rights to others, and a right to transmit or display by radio or video. In the United States, most existing works have a copyright for a term ending 70 years after the death of the author. If the work was a work for hire (e.g., a work created by an employee of a corporation within the scope of the employee's employment, in which case the corporation is awarded the copyright), then the copyright lasts for 120 years after creation or 95 years after publication, whichever is shorter. An author obtains a copyright once the work of expression is materialized in a tangible medium. They can also be registered with the U.S. Copyright Office to obtain additional benefits.

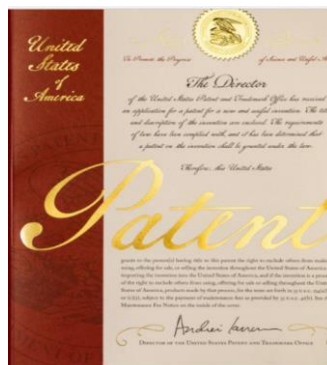
Trade secrets protect secrets of a company that provide a competitive advantage. The formula for Coke® is a classic example. Trade secrets last indefinitely as long as they remain secret. To have a trade secret, a company has to perform steps to keep the information secret, such as by only allowing a few key people to know the secret, securing the information (e.g., formula) in a safe, etc. If someone else finds out about the secret or reverse engineers a product to determine the secret, the trade secret protection is lost for good.

Trademarks are one or more words, graphics, logos, and/or scents that identify a source or origin of a product or service. An example is the Nike® Swoosh. To obtain a trademark registration, one has to apply for the trademark with the U.S. Patent and Trademark Office (USPTO). The USPTO performs a search to see if any other marks exist that are too similar to

the application. If there is a likelihood of confusion with another mark, the USPTO will reject the application. If you can convince the USPTO that your application should be granted, and if the USPTO does grant the application, generally, the trademark is valid throughout the United States. If you register your trademark, you obtain a presumption of validity and ownership. A senior unregistered user, however, can trump your rights (described below). You also have rights to potentially stop people not just for what is listed in the registration, but closely related goods / services or anything that would be confusingly similar. Typically, the owner of a registered mark can prevent unauthorized use of the mark in relation to products or services which are identical or similar to the registered products or services. The test is always whether a consumer of the goods or services will be confused as to the identity of the source or origin.



Patents are legal documents filed with the USPTO that describe and protect inventions. Patents provide a negative right – the right to exclude others from making, selling, using, or importing the patented invention. People often think of a patent as a monopoly in the claimed invention for a limited period of time. Patents are valid for twenty years from the earliest filing date (excluding provisional applications). In exchange for the monopoly granted by the U.S. government for a limited period of time, the patented invention is published so that others can learn from the patented invention and potentially build upon the knowledge.



Provisional Patent Applications

As a small business or a solo inventor, you may not be sure whether you want to take the plunge and file a full-blown patent application (also called a utility patent application). You are not sure if your idea is patentable. Further, if you read no further and you decide to pay a patent attorney to prepare a patent application for you, you may not have the funds necessary to pay the patent attorney's fees. Or you may not have perfected your idea and you may need more time to flesh out the details of your idea.

Instead of filing a utility patent application, you can file a placeholder patent application, also called a provisional patent application. You do get a filing date for the provisional application. A provisional patent application, however, must be converted into a utility patent application on or before its one year anniversary. If the one year anniversary ends on a weekend or holiday, you can file the utility patent application on the next business day. If you don't decide to convert the provisional patent application into a utility patent application by the one year anniversary date of the provisional filing date, the provisional patent application expires and remains unknown (does not publish).

For example, suppose you file a provisional patent application on March 28, 2017. By March 28, 2018, you have to file a utility patent application that claims priority back to the provisional patent application to get the earlier filing date of the provisional application. If you do not file a utility patent application that claims priority back to the provisional patent application by the March 28, 2018 deadline, then the provisional patent application expires and is no longer in force.

a) Format

As described in more detail below, a utility patent application has a specific format that it must follow. A provisional patent application, however, can have any format. For example, I have submitted printouts of Powerpoint slides, white papers, notebook pages, notes, hand drawings, etc. as part of a provisional patent application.

Although a provisional application can have any format, you should not include statements in your provisional patent application that a court could use to limit your invention. I

recommend staying away from definitive qualifiers, such as: always, never, must, absolutely, always, only, crucial, essential, every, important, very important, necessarily, necessary, obviously, preferred, require, or requires. Also, you can and should use the words “can” and “may” in your provisional application. Further, you should use the phrase “for example” or “in one embodiment” (which means “in one example”) often at the start of a sentence when the sentence provides an example or is one step in a process. Do not, however, indicate that an embodiment is a preferred embodiment.

Please note that a provisional patent application is only as strong as what is disclosed in the application. For example, if your idea relates to a new widget, and you only disclose that you glue together parts A, B, and C to make the widget and you don’t disclose that you also need part D (because you don’t realize you also need part D), then part D does not obtain the earlier provisional filing date once you file a utility application disclosing part D. As described in more detail below, the claims of a patent application can have different dates. If a provisional does not disclose part D, and you later claim part D in your utility patent application (filed on March 28, 2018) that is related to the provisional patent application (filed on March 28, 2017), then part D only gets the March 28, 2018 date and not the earlier March 28, 2017 date. Therefore, it is best to describe everything you can about your idea in a provisional patent application so that your provisional patent application is as strong as possible. Additionally, you can file multiple provisionals (e.g., on incremental improvements to your invention) and can then claim priority to all of these provisionals in one utility application. Each claim of the utility application will get the filing date of whichever provisional it was first disclosed in.

b) Costs

Provisional patent applications are relatively inexpensive. If you hire a patent attorney to prepare a provisional application for you, the cost is typically between \$3,000 - \$6000, depending on how much work goes into the application and how complicated the application is.

A Provisional Application for Patent Cover Sheet (the form used to file a provisional application) is included in the Appendix (pg. 35). A Credit Card Form is also included in the Appendix (pg. 39).

Utility Patent Application

a) After Drafting Your Patent Application, What's Next?

Now that you have drafted your patent application (by yourself or by hiring a patent attorney / agent), what comes next? You have to file your patent application. You must meet the requirements to secure a filing date for your patent application.

To be awarded a filing date for your application, your application has to include a specification, at least one drawing if necessary, and at least one claim. The forms to file a patent application are included in the Appendix (pg. 40 - 42). There are multiple fees involved for filing a patent application. You have to include the Utility Fee, the Search Fee, and the Examination Fee. Please note that these items are different if you qualify for a small entity status or a micro entity status (discussed in the “A Do It Yourself Guide to Drafting a Patent Application” e-book).

Also, you have the option of filing your application with a Non-Publication Request. You can file a Non-Publication Request if you do not want the application to be published. I do not recommend this (unless it concerns a government secret or confidential information). Also, if it isn't public, you will have a more difficult time accessing the application through PAIR (later in this e-book). You also should not include multiple dependent claims.

If one or more of these elements are missing, or a portion of them is missing (such as if pages are missing from the patent application), the USPTO will send you a Notice of Incomplete Application and you will not have secured a filing date. You will then have to send the USPTO the missing element or elements to secure a filing date (which will be the date that the USPTO has received everything). Thus, if you are trying to file an application before or on a due date (i.e., also called a bar date, such as the date upon which a provisional application expires, before you present your invention, before your invention is published, before you offer your invention for sale, or before you sell your invention), this can cause you to miss the due date. Therefore, it is very important to check all of your filing papers (e.g., make sure that all of the pages of your patent application and figures are present after making copies) before you file your patent application so that you secure a filing date before or on your due date. If the USPTO determines

that your patent application includes all of the above mentioned requirements, the USPTO will send you a Filing Receipt. The Filing Receipt indicates your filing date and a serial number (also called an application number) for your patent application. An example of a serial number is 12/123,456. All future correspondence with the USPTO relating to your patent application will have the serial number of your patent application on the correspondence. A sample filing receipt is included in the Appendix (pg. 49).

The Filing Receipt will also indicate the title of your patent application, the amount of filing fees that the USPTO has received from you for the application, any docket number (i.e., identifier) that you assigned, the number of claims in your patent application, the number of independent claims in your application, a listing of the inventors with their city and state of residence and citizenship, any priority claims you are making (e.g., to a provisional patent application or another utility application (e.g., if this is a continuation application)), and if a “foreign filing license” has been granted. A foreign filing license is a license awarded by the USPTO that your application can be filed in foreign countries because your application does not relate to defense or other sensitive government areas. In most cases, the USPTO grants you a foreign filing license when you receive your Filing Receipt.

You should check the Filing Receipt for errors, as sometimes the USPTO incorrectly indicates one or more errors in the above Filing Receipt. If there is an error on the Filing Receipt, you will have to submit a Request for Corrected Filing Receipt in which you indicate the error(s) on (a copy of) the Filing Receipt. Once the USPTO receives the Request for Corrected Filing Receipt, the USPTO will send you an Updated Filing Receipt.

If you filed electronically, you will receive an electronic Filing Receipt with your serial number right after you electronically file your patent application. If you filed your application by mail, you will likely receive your Filing Receipt in about one to two months.

In addition to the above requirements, there are several items that you can include with the filing of your patent application or you can send them in after you file your patent application. In particular, you can pay the filing fees for your patent application at the time of filing or after you file. You should pay at the time of filing. Additionally, you have to submit a Declaration to the USPTO when you file your patent application or after you file your application (when receiving

a Notice of Allowance). The Declaration states that each inventor listed as an inventor is in fact an inventor of the claimed invention. The Declaration includes each inventor's home address, citizenship, and signature. I recommend using the forms provided by the USPTO instead of making your own forms. The USPTO forms are located by navigating to the USPTO's home page (www.uspto.gov) and then searching for "forms". Please note that for new patent applications, you should file after the September 16, 2012 date. The Declaration is form PTO/SB/01. You can then type the information on the form, hand write the information (in ink) on the form, or use a program to edit the form and then print it out. If you are hiring or have hired a patent attorney, they will have you sign a Power of Attorney form (PTO/SB/81). The Power of Attorney form states that you are appointing the patent attorney to represent you before the USPTO. The Power of Attorney form is included in the Appendix (pg. 52).

Also, just to be complete, a Power of Attorney form for multiple inventors is included in the Appendix as well. If you are filing and prosecuting a patent application yourself, you don't need a Power of Attorney form.

One other thing to include in the transmittal form is an Application Data Sheet, or ADS. The ADS lists all of the inventors on the form and their residences. It is standard practice to file an ADS with the transmittal papers. An Application Data Sheet is in the Appendix (pg. 43).

If you file your patent application and do not pay all of the filing fees, you will receive a Notice to File Missing Parts.

a) Notice to File Missing Parts

If you file your patent application without the required filing fees and/or with an amount that is less than the required filing fees, you will get a Notice to File Missing Parts (NTFMP) from the USPTO. The NTFMP indicates what fee should be paid. You have to respond to the NTFMP with a Response to Notice to File Missing Parts and include the required fees.

The NTFMP also states a time period that you have to respond. This time period to respond is usually two months from the date of mailing of the NTFMP, but you can extend this due date for a total of up to five additional months (so you can get a total of seven months to respond to the NTFMP). If you have received a filing receipt with a filing date and a serial number, you will

receive an Updated Filing Receipt after filing the Response to Notice to File Missing Parts. You should check this Updated Filing Receipt to make sure that it confirms that you submitted the fees that you submitted with your Response to Notice to File Missing Parts.

An example of a Notice to File Missing Parts and a Response to the Notice is shown in the Appendix (pg. 55).

If you have met all of the initial requirements of your patent application, the patent application will be forwarded to a particular group (also called Art Unit) for assignment to an Examiner and eventual examination. The patent application is now in the queue to be reviewed (examined). As there is currently a significant backlog of patent applications waiting to be examined, it may be a few years (e.g., one to three years) before an Examiner picks up and reviews your patent application. Even though it usually takes a long time before an Examiner examines your patent application, this should not stop you from trying to bring your product to market and sell your product. You can write on your product or product packaging the words “Patent Pending” to indicate (e.g., to potential competitors) that you have filed a patent application and have secured a serial number and filing date. A sample NTFMP is in the Appendix and a response is also included. However, the USPTO is getting quicker with examining applications.

b) Assignment

A patent assignment is a document that an inventor signs to transfer or sell the entire interest in a patent or patent application. When you file a patent application, the rights in the patent application (to prevent others from using, selling, making, or importing the claimed invention) are granted to the inventor or inventors. An assignment is a legal document that transfers the inventors’ rights in the patent over to the assignee. A transfer of lesser than full rights in a patent is a license.

The assignee (the party who is receiving the assignment) is typically the company for which the inventors work. The company has the inventor or inventors sign an assignment so that the company can control prosecution of the patent application through the USPTO (i.e., can control the process with the USPTO of obtaining a patent on the invention).

Assignments can be signed before and/or after a patent application issues as a patent. An unrecorded assignment is not effective against third party buyers of the patent application who do not otherwise have knowledge of the assignment. Therefore, a patent assignment is typically filed with the USPTO (also called “recorded with the USPTO”) to protect against later transfers of the patent away from the assignor (e.g., inventors). An Assignment should be recorded within 3 months. There is a separate recordation fee for recording an assignment with the USPTO. See the Appendix for a sample Assignment (pg. 59). Additionally, a 3.73 Statement form is also included (pg. 62). This form is used to denote ownership in the patent application or patents.

c) Initial Formalities Completed

After the initial formalities for your patent application are completed, you have to wait for your patent application to be reviewed by an Examiner. Although there are efforts to reduce the backlog of patent applications waiting to be examined, you now typically have to wait one to three years before your application gets examined. The time period that you have to wait is dependent upon the “art unit” (technology space) that your application is assigned to and how many other applications in the same technology space are before your application. There are, however, several ways in which you can move ahead in the queue which are described below.

Ways to Speed Up Prosecution of your Patent Application

a) Petition to Make Special

In certain situations, you can have your patent application examined ahead of other applications pending in the same technology area (i.e., the same art unit). To do this, you can file a “petition to make special”. The petition to make special may be granted for the following reasons: 1) Applicant’s age is 65 or greater; 2) Applicant’s health is such that he or she might not be able to prosecute the application if the application was examined in its normal time frame; 3) the subject matter of the application will materially enhance the quality of the environment; 4) the subject matter of the application will materially contribute to the development or

conservation of energy resources; or 5) the subject matter of the application will materially contribute to countering terrorism. A Petition to Make Special Form is included in the Appendix (pg. 66 - 68). Also, the Petition to Make Special Based on Age form is also included in the Appendix (pg. 65, 67). This form is the most common form if you want to make the application “special”.

b) First Action Interview Pilot Program

The First Action Interview Pilot Program does not technically advance an application out of order for examination but may in effect speed up the prosecution of a patent application. This program calls for the Examiner assigned to your patent application to conduct an interview (telephonic or in-person) with you prior to the Examiner issuing a first Office Action. Your application has to include a no more than a maximum of 20 claims and no more than 3 independent claims. There are no extra fees for participating in this program. A request to participate in this program can be filed at any time up to one day before a first office action is issued.

c) Accelerated Examination

The accelerated examination procedure allows an applicant to receive a final decision on patentability of their application within 12 months from its filing. In exchange for the speed of this decision, the USPTO requires the applicant to 1) limit the application to a single invention with no more than 20 total and 3 independent claims, 2) perform an extensive pre-examination search, and 3) submit at the time of application filing the pre-examination search results together with certain detailed examination documents designed to assist the examiner in the examination process. The time needed to prepare the detailed examination documents is often significant, which raises the cost of this option significantly in addition to the filing fee increase. For example, the costs for pursuing accelerated examination can be between \$10,000 to \$20,000 in attorney fees. This is outside the scope of this e-book – if you are interested in this program, I recommend that you consult a patent attorney (but you can still prepare the patent application yourself). The accelerated examination procedure must be filed via EFS-Web (electronically).

d) Prioritized Examination

Under the America Invents Act, a prioritized examination option has been created in addition to the normal filing fees. When you request prioritized examination for a utility application, your application moves up in the examination queue. The USPTO on average tries to provide a final disposition within 12 months of prioritized status being granted (which is much faster than the typical 2-5 years that normal prosecution takes). The final disposition occurs when your application is allowed, a final office action is mailed, the application is appealed, or the application is abandoned. If you plan on taking advantage of this option, you have to file your utility application electronically. In 2011, the USPTO set a maximum number of applications that it will accept under this program as 10,000 applications. I would check the USPTO website to determine the maximum number of applications eligible under this program in future years.

Another name for this program is a Track One Application. The case in the Track One program moves quickly – the case concludes in approximately 12 months. The application is not abandoned – it just receives a Final Office Action.

A Track One Application form is included in the Appendix (pg. 68). The Track One application must be filed electronically via EFS-Web.

Duty to Disclose

Anyone working on the patent application (inventor(s) and/or attorney) have a duty to disclose to the USPTO all “prior art” that is relevant to the claimed invention. Prior art is issued patents, patent publications, articles, pages of books, and any other references that are material. This duty to disclose prior art exists when the patent application is filed and during prosecution of the patent application. You don’t have to disclose background material, but any publication that is relevant to your claimed invention should be disclosed. It is better to be more cautious and submit everything that is related to your patent application and then let the USPTO determine what is relevant and what is not relevant.

You submit references to the USPTO in an “Information Disclosure Statement” or IDS. If you are submitting patent publications (patent applications publish 18 months from its earliest priority date) or issued patents (patent applications publish when they issue), the IDS only has to

list the publication number or patent number. You do not have to include the actual publication or issued patent with your IDS when you file the IDS with the USPTO. If, however, you are submitting non-patent literature, such as a magazine article, pages from a book, a journal publication, a web page, a foreign patent or foreign patent publication, etc., you have to submit a copy of the reference with the IDS to the USPTO. You should also include in your IDS a listing of and copy of Office Actions that have issued in this or other patent applications related to this patent application.

The listing of references that you are submitting to the USPTO is written or typed in form PTO- 1449 (PTO/SB/08a and PTO/SB/08b). A sample IDS is provided in the Appendix (pg. 72). As described in more detail below, sometimes you have to pay a fee when you submit an IDS and sometimes you don't. You should check the rules on this. The recommended Information Disclosure Statement has to be filed electronically. The forms to file electronically are via the Electronic Filing System (EFS). One thing to note is that you can increase the lines to fill out the form (in other words, you can increase the number of references in the form), including the issued patents, the publications, and the non-patent literature.

The address you submit an IDS to is:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

An IDS can be filed before the issuance of a first Office Action and no fee is due at that time. If the filing of an IDS is at any time after an Office Action is issued, you have to pay a \$180 fee and submit a statement, which is present on the IDS form. The statement says that each item of information contained in the IDS was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of IDS; or that no item of information contained in the IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the IDS was known to the Applicant or their legal representative more than three months prior to the filing of the IDS. You have to choose the one that applies.

Drawings

You can prepare the drawings for the patent application yourself, but I recommend hiring a draftsman or company to assist in the drawings (to prepare formal drawings). You want the drawings to be clear and legible. Also, there are specific rules to follow when preparing the drawings. The fees vary for each draftsman or company. To get formal drawings, it will, depending on the complexity of the case, roughly cost you a few hundred dollars. I recommend getting formal drawings. The company I have hired for my e-books and the website is The Patent Drawings Company. They charge \$29 per figure for Utility patent drawings and \$39 per figure for design patent drawings. They also prepare trademark drawings for your mark. They charge \$49 per figure for trademarks. The company's email address is info@thepatentdrawingscompany.com and their phone number is 1-773-312-3937. If you are reading this e-book and want to use them for another project not associated with this website, please tell them that you heard of them from me.

Preliminary Amendment

In some cases, you may want to change your claims after you file your patent application and before your patent application is examined by the USPTO. For example, suppose you discover new prior art that you have to cite to the USPTO and discloses what you have claimed in your patent application. In this case, you may want to change your claims after submitting this reference in an IDS. Alternatively, suppose you just don't like the claims you filed your application.

Or suppose you file a continuation application, which is a related patent application that has the same specification as its parent but has different claims and is a separate filing. You can file a continuation application by filing the same exact patent application as the parent application (i.e., same specification and same claims) and then you can change the claims after the filing date. You should also add a priority claim to the continuation application that states that you are claiming priority back to the related parent application.

In these situations, you can file a Preliminary Amendment. In the Preliminary Amendment,

you can change the claims of the patent application (e.g., by canceling the original claims and adding all new claims) and you can change certain parts of the patent application, such as typographical errors or adding a priority claim to the specification. Two sample Preliminary Amendments are shown in the Appendix (pg. 78) (one with all new claims and one with revisions to the claims).

If you have any questions on the patent process, filing papers, a document, filing a document, or a general question, I highly recommend calling the USPTO. If you call the Inventor's Assistance Center (1- 800-PTO-9199 (1-800-786-9199)), they are usually very knowledgeable, helpful, and willing to answer your questions.

Examination of Your Patent Application by the USPTO

When your patent application reaches the top of the queue, a patent examiner (Examiner) will review your patent application. Although the Examiner should review your specification and claims, often the Examiner is so busy that the Examiner only has time to review your claims. The Examiner will review the information that you provided to the USPTO in your IDS or IDSes.

The Examiner will also perform his or her own search to see what the Examiner can find relating to your claims. In most cases, the USPTO will reject your claims as being unpatentable for one or more reasons. The USPTO will send you these rejections in a communication called an Office Action. Your job (or your attorney's job) is to convince the Examiner that your invention is different than and non-obvious over the cited art. You respond to the Office Action with a written response, called an Amendment or Response (depending on whether you are amending your claims in any way).

In rare instances, the Examiner will not locate any art that is close to your claims and will allow your claims in the first communication from the USPTO. Some people consider this to be good because your patent application will become a patent quickly and you have not needed to take a position in any arguments. Others, however, do not consider this to be good because they feel that your claims are too narrow if they were allowed right away.

a) Patent Laws and Rules

In order to obtain a patent, an invention has to meet three requirements – 1) it has to be useful; 2) it has to be novel or new; and 3) it has to be non-obvious. Further, as described in our e-book titled “A Do It Yourself Guide to Drafting a Patent Application”, there are several requirements that currently have to be met in the specification and claims.

Usefulness or utility is a relatively easy standard to meet, as just about anything has utility. The patent statute or law that relates to utility is 35 U.S.C. 101. This statute states that if you invent or discover a new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, you may obtain a patent on this invention. You can view the specific language of the statute by going to the USPTO website (www.uspto.gov), selecting the Patents menu, and then selecting “Patent Laws, Regulations, Policies & Procedures”. You can then select “Patent Laws, Consolidated” and can scroll down to the statute.

35 U.S.C. 101 is the patent statute or law that relates to utility or usefulness. As described in more detail below, there are a few concepts that do not meet 35 U.S.C. 101, such as an abstract idea, a natural phenomenon, or law of nature.

As stated above, there are several requirements that currently have to be met in the specification and claims. The patent statute or law that relates to these requirements is 35 U.S.C. 112. 35 U.S.C. 112 has several paragraphs. 35 U.S.C 112, first paragraph states that the specification has to contain a written description of the invention that describes the invention in clear and exact terms to enable one of ordinary skill in the art to make and use the invention. 35 U.S.C. 112, first paragraph, covers the enablement requirement and the written description requirement. 35 U.S.C. 112, second paragraph indicates that the specification shall conclude with one or more claims that particularly point out and distinctly claim the subject matter which the inventor regards as his invention.

Novelty is a comparison of what your invention is relative to what else is known before the date of your invention (e.g., before your patent application filing date). The patent statute or law that relates to novelty is 35 U.S.C. 102. 35 U.S.C 102 has several paragraphs, and Examiners most frequently refer to 35 U.S.C. 102(a), 35 U.S.C. 102(b), or 35 U.S.C. 102(e). 35 U.S.C.

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102(a) states that a person can get a patent unless the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention. 35 USC 102(b) states that you can get a patent unless the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of an application for a patent. 35 U.S.C. 102(e) states that you can get a patent unless the invention was described in a printed patent application filed by another in the U.S. before the invention or patent application was granted as a patent by another in the U.S. before the invention.

As stated above, you can view specific language of the statute(s) by going to the USPTO website (www.uspto.gov), selecting the Patents menu, and then selecting “Patent Laws, Regulations, Policies & Procedures.” You can then select “Patent Laws, Consolidated” and scroll down to the statute(s).

Non-obviousness is tougher requirement to satisfy, as an invention can't be obvious in view of other known ideas or combination of ideas. Obviousness is viewed in light of “one of ordinary skill in the art,” which is a fictitious person who is skilled in the technology described in the patent. The patent statute/law that relates to obviousness is 35 U.S.C. 103. 35 U.S.C. 103 has several paragraphs, and the most frequently cited portion of the statute is 35 U.S.C. 103(a). This states that a patent may not be obtained despite the invention not being identically disclosed or described if the subject matter sought to be patented would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. You can view this statute in the same place as described above.