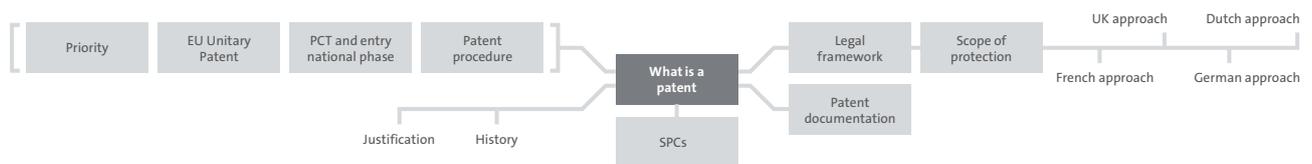


# What is a patent?

## Essentials: Patent fundamentals



## Basic definition

A patent is a legal title granting its proprietor the right to prevent third parties from commercially using an invention without authorisation. An invention is usually a **product** or a **process**.

The term of the patent is limited.

Like other forms of intellectual property, the rights provided by a patent do not actually permit their owner to do anything. But they do enable him to stop other people doing things: they enable him to exclude others from practising the invention within the state in which they were granted.

### Product

An object, chemical or device; i.e. a physical thing

### Process

A method of making or doing something; a recipe

## General considerations

Patents are granted after successful application to, and examination by, a patent office. This may be the national patent office of a state (e.g. the UK Intellectual Property Office, the *Deutsches Patent- und Markenamt* (Germany) or the *Institut national de la propriété industrielle* (France)). For those states that contract to the European Patent Convention (EPC), it may also be the European Patent Office (EPO) in Munich.

### Further information

[www.epo.org/](http://www.epo.org/)

Patents are currently domestic in nature. There is at present no such thing as a transnational patent. Even though applications for protection in multiple states may be made to the EPO, these become a bundle of national patents upon grant. Accordingly, the EPO has no jurisdiction to consider issues of patent infringement. That is left to the national courts.

There are currently 38 contracting states to the EPC, each having domestic patent legislation which in its essentials follows the corresponding provisions of the EPC.

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## Patentability

In order to gain patent protection, an invention must satisfy five fundamental requirements:

- (1) There must in fact be an invention.
- (2) The invention must be new.
- (3) It must possess a degree of inventiveness over what has gone before (i.e. it must involve what is known as an inventive step).
- (4) It must be susceptible of industrial application.
- (5) It must not fall within a list of “excluded” subject-matter.

These fundamental requirements are set out in **Article 52 EPC** and are replicated in the national laws of the EPO’s member states.

A patent has a maximum term of 20 years from the date of filing of the patent application in the state in question. For it to stay in force for this term, regular renewal fees must be paid. Failure to pay the renewal fees may cause the patent or patent application to lapse.

### Article 52 EPC

#### Patentable Inventions

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

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## Introducing infringement

A patent gives its owner the exclusive right to prevent third parties that do not have the patent holder’s consent from performing certain acts with the patented invention within the territory in question.

The restricted acts are derived from what is now **Article 25 of the 1989 Draft Community Patent Convention (CPC)**. The CPC never came into force, but at the time that the original EPO member states were re-drafting their national laws to bring them into line with the EPC, it looked as though it would. Accordingly, the states based their primary infringement provisions upon it. The restricted acts include making, selling and using as well as importing or stocking for these purposes. Secondary infringement is also possible.

As already mentioned, at present there is no such thing as a transnational patent. If an individual or company wants their invention to be protected in different states, they must ensure that they hold rights in each of those states. Producing the invention of a German patent in France (for example), or selling allegedly infringing products there, does not constitute infringement. It would, however, be an infringement to import infringing products made in France into Germany.

### Article 25 of the 1989 Draft CPC

Prohibition of direct use of the invention  
A Community patent shall confer on its proprietor the right to prevent all third parties not having his consent:

(a) from making, offering, putting on the market or using a product which is the subject-matter of the patent, or importing or stocking the product for these purposes;

(b) from using a process which is the subject-matter of the patent or, when the third party knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the territories of the Contracting States;

(c) from offering, putting on the market, using, or importing or stocking for these purposes the product obtained directly by a process which is the subject-matter of the patent.