

request that a patent be granted.

- A *description* of the invention.
- One or more *claims*, which must be clear, concise and supported by the description and which must define the matter for which the applicant seeks protection.
- An *abstract* which provides summary technical information about the invention.
- *Drawings* where required.

Q. What are the advantages of utilising the Register of Patents?

A. Patent documents contain a considerable amount of information that can be used to enrich operations in industry. Patent information:

- offers technical solutions to problems in a particular field.
- avoids duplication of effort in the development of technology.
- prevents liability resulting from unknowing infringement of a patent.
- informs negotiating positions with suppliers.
- can be used to monitor competitors' activities in the development of technical solutions.

Q. Who protects the patented invention from being exploited by others?

A. The owner! The owner of a patent is entitled to prevent other persons from exploiting his invention commercially without his permission. It is up to the owner of the patented invention to take the necessary steps to prevent others from infringing his patent. Patent rights can be enforced by commencing proceedings in the High Court to obtain one or more of the following remedies:

- a declaration of the validity of the patent and of the fact of infringement
- an injunction to restrain the infringement.
- an order for the delivery or destruction of the infringing product or article.
- damages in respect of the infringement or alternatively, an account of the profits derived from the infringement.

Q. Can I renew my patent or get another grant for the same invention?

A. No. Unlike trade mark rights, patent rights cannot be renewed. In addition, once the subject matter of a patent application has been published, the technical information enters the body of existing knowledge in the field to which the invention relates and the element of novelty is lost. The effect of this is that the subject matter of the invention cannot be patented again anywhere in the world, where an international search of the existing state of the art is conducted as part of the examination process. Patent legislation requires patent applications to be subjected to an international "state of the art" search.

Q. Do persons need to get my permission to use my invention after the period of statutory protection has ended?

A. No. When statutory protection has lapsed or expired, provided that no other rights attach to the subject matter of the invention, the invention can be used by any one, without any need for permission from the inventor.

Q. Who benefits from the patent system besides the patent owners?

A. Everyone! Patent protection makes new technology marketable and serves as a stimulus to innovation. The grant of a patent may be viewed as an exchange between the jurisdiction in which protection is sought and the inventor. The jurisdiction offers the inventor a short-term monopoly over the invention in return for disclosure of the technology involved. When a patent is granted - and in the case of PCT applications, even before a grant is made - the details of the invention are published. This disclosure puts the technical information relating to the invention in the public domain. The information can then be studied (but not commercialised) by persons interested in the further development of the patented technology or in development of alternative technology. The exchange of technical information facilitated by the patent system is extremely useful to persons involved in research and development and supports innovators in their efforts to improve the quality of human life by finding solutions to technical problems.

Inventions which have had a major impact on everyday life include electric lighting, the aeroplane, the ballpoint pen, the computer and more recently compact discs and the now indispensable cellular phone!

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Patents



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Q. What is a patent?

A. A patent is a title granted by the State to the creator or owner of an invention, which entitles the inventor to prevent others from manufacturing, using, selling and in some cases, importing the technology without his permission for a specified period of years.

Q. What is an invention?

A. An invention is an idea which in practice provides a solution to a specific problem in the field of technology. An invention may be a product or a process.

Q. What laws relate to patents in St. Vincent and the Grenadines?

A. The grant of patents is currently governed by the Patents Act, CAP. 314, which was passed by Parliament on 16th Nov 2004 and enforced from July 8th, 2009.

Q. What are the necessary conditions for an invention to be patentable?

A Section 13 requires all inventions to pass the 3-step test:

- be new/beyond the existing state of the art
- involve an “inventive step” (not be obvious to a person having ordinary skill in the particular field of technology)
- be industrially applicable (useful in industry).

Q. What cannot be patented?

A Section 13 excludes the following:

1. Discoveries, scientific theories and mathematical methods.
2. Literary, dramatic, musical or artistic works or any other aesthetic creation whatsoever.
3. A scheme, rule or method for performing a mental act, playing a game or doing business.
4. Diagnostic, therapeutic and surgical methods for use on the human or animal body.
5. The presentation of information.
6. Any invention whose commercial exploitation would be contrary to public order or morality.
7. Any invention which is prejudicial to human, animal or plant life, health or the environment.
8. Any plant or animal variety or any biological process for the generation of plants or animals, not being a microbiological process or the product of such a process.

Q. Why should I seek protection for my invention?

A. If an invention is disclosed to the public without patent protection, its owner will have no right to prevent others from using it for their own purposes. Also disclosure may result in the invention losing the essential element of

novelty. It is therefore wise to make a patent application before disclosing your invention to any one else and before anyone becomes aware of its existence.

Q. What rights are conferred by the grant of a patent?

A. In addition to the pride and satisfaction of having been recognised as a creator of new technology, the grant of a patent gives the patent owner the exclusive right to market his invention. The owner can either license the manufacture, sale and use of the invention by others or assign his patents right entirely in return for money.

Q. What is the rationale for a patent owner having exclusive marketing rights?

A. If a patent owner is successful in commercializing an invention, his patent rights are the means by which he may recover the money spent in developing the technology and if the invention is well received, make a profit that may be invested in further innovation.

Q. How long does local patent protection last?

- A. The period of patent protection will be the international minimum term of 20 years from the Date of Filing and or Priority Date.
- B. S.45 - once a patent application is made, the applicant is required to maintain the application. In this regard a maintenance fee is required to be paid from the 2nd year to the 20th year and must be paid prior to the start of the year otherwise a 10% surcharge will apply for a period of six months after the payment was due. Non-payment of the maintenance fee will result in the lapse of a patent or in the case of an application, the application will be deemed withdrawn.
- C. S. 45a & 45b - In the event that a patent lapses for failure to pay maintenance fee an application may be made to the Registrar for restoration of same. Applications should be made in writing with the prescribed fee and supporting evidence . Please note that the outstanding maintenance fee will be required to be paid prior to restoration.

Q. Are there alternatives to getting a patent?

A. Yes. Claimed inventions which only meet the criteria of novelty and industrial applicability/usefulness may qualify for the grant of a “utility certificate”. The maximum term of protection for a utility certificate is 10 years. The procedure for obtaining a utility certificate is generally shorter and simpler than the procedure for obtaining a patent. The rights existing under the utility certificate are the same as those conferred by a patent but for a shorter period.

Q. Has St. Vincent and the Grenadines signed onto any international treaties in relation to patents?

- A.** Yes. St. Vincent and Grenadines is a party to the following international treaties relating to patents:
- The Paris Convention for the Protection of Industrial Property (1883), as of 29th August 1995.
 - The World Trade Organisation Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPs) 1994, as of 1st January 1995.
 - The Patent Cooperation Treaty (1970), as of 6th August 2002.

Q. What is the Patent Cooperation Treaty (PCT)?

A. The Patent Cooperation Treaty is an agreement for international cooperation in the filing, search and preliminary examination of patents. It is administered by the World Intellectual Property Organisation (WIPO) and so far, 124 countries have agreed to use the system.

Q. What is the aim of the PCT?

A. The PCT is designed to make the process of seeking patent protection for an invention in several countries simpler and more economical. It has become the preferred means of application for those intending to market their inventions widely.

Q. What are some basic facts about the PCT system?

A. The PCT system has two phases:

An *international phase*, which encompasses:

- filling of international application
- international search
- international publication
- international preliminary examination

and a *national phase*, which is carried out by each designated national office. The decision on granting patents belongs solely to the national office in the national phase.

The International Bureau of WIPO has been appointed as the receiving office for international applications filed by residents and nationals of Saint Vincent and the Grenadines. Citizens and local residents are currently entitled to a 75% reduction in PCT filing fees.

Additional information on the PCT may be obtained on the internet at <http://www.wipo.int/pct/en/>.

Q. What does an application for the grant of a patent generally contain?

- A.** A patent application is generally made up of the following elements:
- A *request* for the grant of a patent which includes the applicant’s name, address, nationality and residence and contact information, the title of the invention and