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PATENT AND TRADEMARK OFFICE**

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Patent Basics for Inventors, Entrepreneurs, and Start-ups

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Outline

- Why Patents?
- Types of Patents
- Patent Examiner Duty
- Understanding Obviousness
- Patent Examination Process
- Applicant Rebuttal
- After-Grants Requirements
- USPTO Resources

Constitutional Authority

- Congress shall have the power ...
 - to regulate commerce with foreign nations, and among the several states, and with Indian tribes. -- U.S. Const. art. I, § 8, cl. 3.
 - to **promote the progress of science and useful arts**, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. -- U.S. Const. art. I, § 8, cl. 8.

What is a Patent?

- A Property Right
 - Right to *exclude others* from making, using, selling, offering for sale or importing the claimed invention
 - Limited term
 - Territorial: protection only in territory that granted patent; **NO world-wide patent**

Why Get a Patent?

- A patent can be:
 - Used to gain entry into, and deter others from, a market
 - Used as a marketing tool to promote unique aspects of a product
 - Assert/enforce rights against an infringer or competitor
 - Used as collateral to obtain funding
 - Create revenue – sell or license like other property

Why Do Startups File Patents?

- Attractive to investors and buyers
- Deter patent infringement lawsuits
- Can increase leveraging power
 - i.e. mergers and acquisitions
- Patents are a form of property than can add value to a company's assets

Do I Really Need a Patent?

-MYTHS-

- “If I just publish, I will prevent anyone from getting a patent on my invention”
 - What if already patented?
 - No Patent Claim = No Protection
 - Can’t exclude others from market
 - You may be excluded from making, using, or selling your products or services
- “I’m not going to get a patent, because other countries will steal my invention”
 - How will you keep it secret?

Provisional v. Non-Provisional

- **Provisional**

- Automatically abandoned after one year period
- No claims required
- Written disclosure must meet same requirements as non-provisional
- Not allowed for design

- **Non-Provisional**

- At least one claim required
- Written disclosure must meet requirements of 35 USC 112(a)
- Examined for patentability, can result in a patent



When should you file?

United States is a **First Inventor to File System!**


- Looking for international protection?
 - You must file **before** public disclosure
- Only want US protection?
 - You can file within **one year after** public disclosure

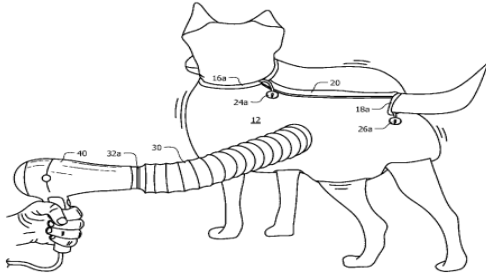
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Non-provisional - Parts, Form and Content

Arrangement of Application

- Title
- Cross-Reference to Related Applications
- Statement Regarding Federally Sponsored Research or Development
- Background of the Invention
- Brief Summary of the Invention
- Brief Description of the Drawings
- Detailed Description of the Invention
- Claims
- Abstract
- Drawings
- Sequence or Computer Program Listings

		 US008371246B1	
(12) United States Patent Streng	(10) Patent No.: US 8,371,246 B1		
	(45) Date of Patent: Feb. 12, 2013		
(54) DEVICE FOR DRYING PETS	6,520,120 B1 * 2/2003 Arnold et al.		
(75) Inventor: Marissa Streng , Indian Rocks Beach, FL (US)	6,595,162 B1 * 7/2003 Hibbert 119/850		
	2008/0314330 A1 * 12/2008 Tarasuk et al.		
	2012/0199082 A1 * 8/2012 Dick 119/850		
(73) Assignee: MTS Innovations, LLC , Indian Rocks Beach, FL (US)	FOREIGN PATENT DOCUMENTS		
(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 22 days.	FR 2520608 A1 * 2/1982		
(21) Appl. No.: 13/039,916	* cited by examiner		
(22) Filed: Mar. 3, 2011	<i>Primary Examiner</i> — Rob Swiatek		
(51) Int. Cl. A01K 13/00 (2006.01)	<i>Assistant Examiner</i> — Lisa Tsang		
(52) U.S. Cl. 119/606 , 119/678; 119/668; 119/671	(74) <i>Attorney, Agent, or Firm</i> — Ronald E. Smith; Smith & Hopen, P.A.		
(58) Field of Classification Search 119/602, 119/603, 604, 614, 616, 665, 668, 671, 677, 119/678, 606, 654, 725, 850, 856	(57) ABSTRACT		
See application file for complete search history.	A pet-drying device including a flexible sheet material having four openings formed therein for receiving the legs of a four-legged animal. Each opening seals around the perimeter of a pet's leg. The sheet material includes first and second longitudinally disposed edges and first and second transversely disposed edges. A first hem in the first longitudinally disposed edge receives a first drawstring for loosely tightening the sheet material around the neck and a second hem in the second longitudinally disposed edge receives a second drawstring that tightens around the tail. The first and second transversely disposed edges are secured to one another with a releasable fastener when the device is wrapped into a tubular configuration around the trunk of a pet. Warm air from a hair dryer is delivered to the inside of the sheet material through an elongate hose that engages a large diameter opening formed in the sheet material.		
(56) References Cited	4 Claims, 4 Drawing Sheets		
U.S. PATENT DOCUMENTS			
3,108,568 A * 10/1963 Whitney et al. 119/174			
3,263,653 A * 8/1966 Miller 119/671			
3,749,064 A * 7/1973 Weinstein et al. 119/664			
4,144,845 A * 3/1979 Sneider 119/678			
4,718,375 A * 1/1988 Krieger 119/678			
5,060,597 A * 10/1991 Fredericks 119/678			
6,234,117 B1 * 5/2001 Spatt 119/850			



Patent Fees

All patent fees are available on USPTO web site

- Be certain to always check for “current fee schedule”
- <http://www.uspto.gov/web/offices/ac/qs/ope/fee010114.htm>

Basic Utility Patent Fees

- Basic filing fee
 - \$280/\$140/\$70
- Search fee
 - \$600/\$300/\$150
- Examination fee
 - \$720/\$360/\$180
- Issue
 - \$960/\$480/\$240
- Provisional Application Filing Fee:\$260/\$130/\$65

Basic Design Patent Fees

- Basic filing fee
 - \$ 180/\$90/\$45
- Search fee
 - \$120/\$60/\$30
- Examination
 - \$460/\$230/\$115
- Issue
 - \$560/\$280/\$140

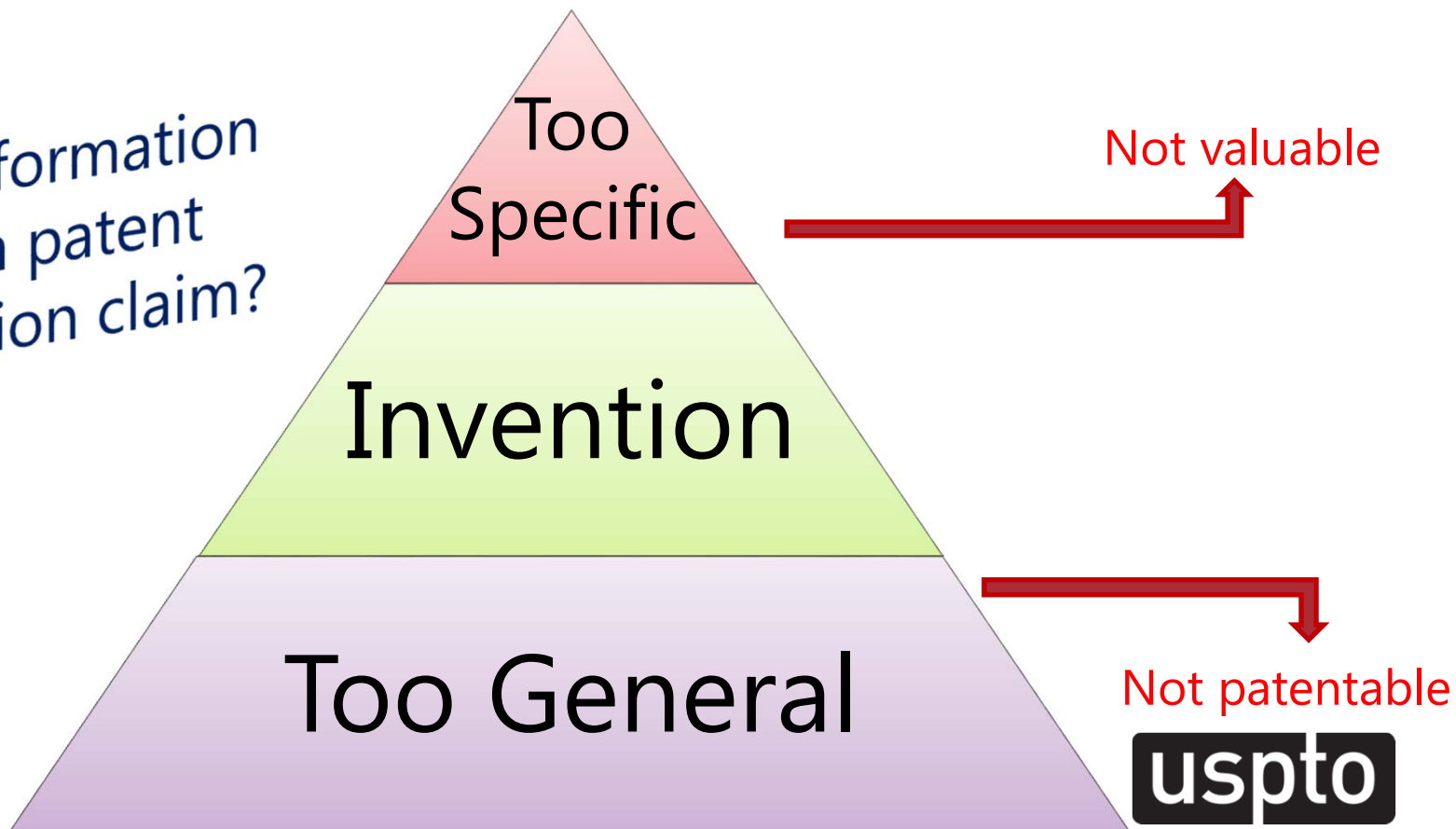


Utility Patent Claims

- Defines what applicant believes is the invention
- Must particularly point out and distinctly claim the subject matter which applicant regards as their invention or discovery
- Must conform to the invention as set forth in the specification – terms and phrases used in the claims must find clear support or antecedent basis in the written description

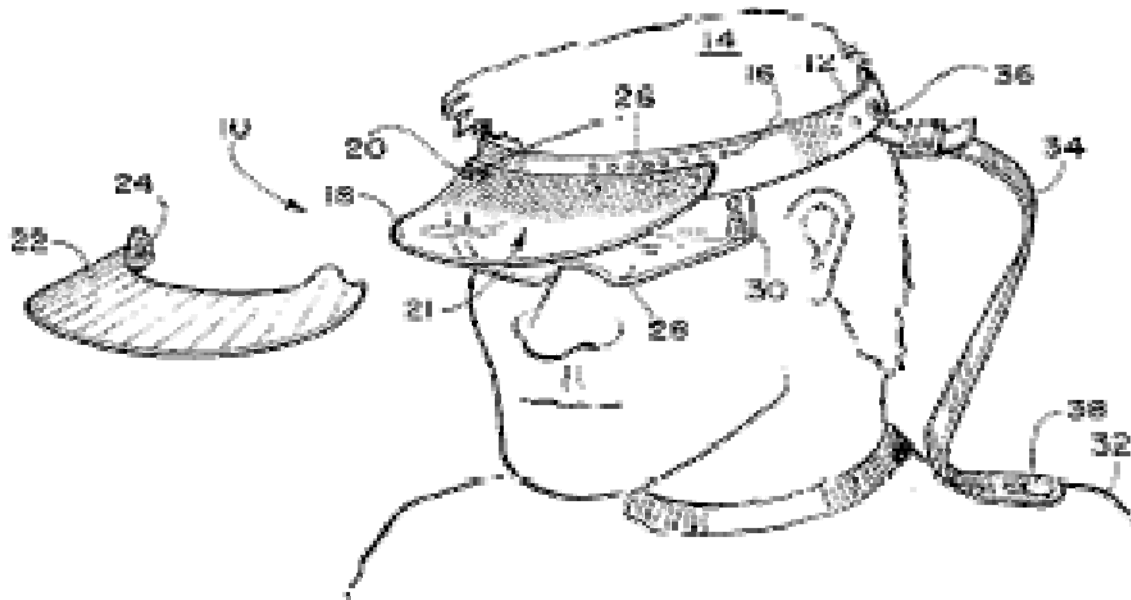
Claim Scope

What information should a patent application claim?



Example of an Independent Device Claim

US Patent No. 6,009,555, titled
"Multiple component headgear system."



Example of an Independent Device Claim

Preamble

Transitional Phrase

1. A headgear apparatus comprising:
 - a headband member having a frontal portion;
 - a visor member removably secured to **said** frontal portion of **said** headband; and
 - an** eye shield member removably secured to **said** frontal portion of **said** headband.

Examples of Dependent Claims

A **dependent** claim incorporates by reference all the limitations of the claim to which it refers.

2. A headgear apparatus as in claim **1**, wherein **said** eye shield member is adjustable with respect to **said** headband member.
3. A headgear apparatus as in claim 1, wherein **said** visor member and **said** eye shield member are secured to **said** frontal portion of **said** headband member by **a** set of rivets.
4. A headgear apparatus as in claim **2**, wherein **said** headband member is formed from neoprene fabric

Patent Examination

- Patent Examiner reviews contents of the application for compliance with all U.S. patent legal requirements
- **Burden is on the examiner: An applicant is entitled to a patent unless...**
 - Requirements of U.S. patent law are not met

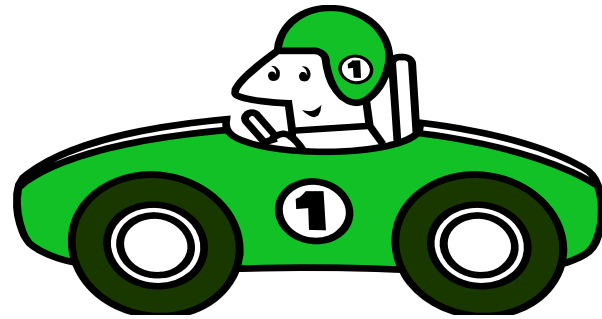
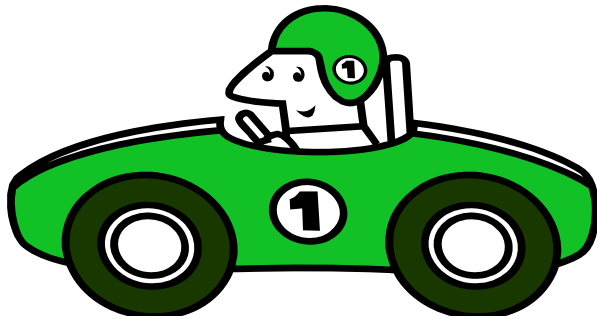
What does a Patent Examiner do?

- **Reads and understands** the invention
- Determines whether the application is adequate to define the **metes and bounds** of the claimed invention
- Determines the **scope of the claims**
- **Searches** existing technology for the claimed invention
- Determines **patentability** of claimed invention
- **Writes an opinion** – called an **Office action** that notifies applicant of the examiner's patentability determination

Understanding Prior Art Rejections

- 35 USC 102 – anticipation
 - Identical
- 35 USC 103 – obviousness
 - MPEP 2141 – 2144.09

Identical

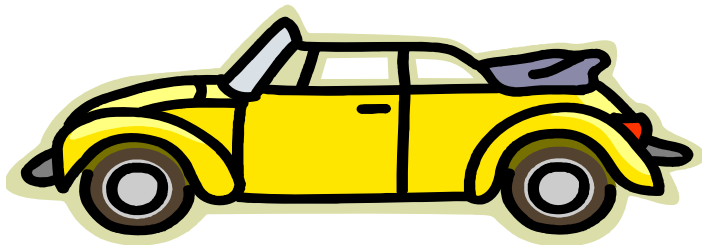


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35 USC 102 – The Law Simplified

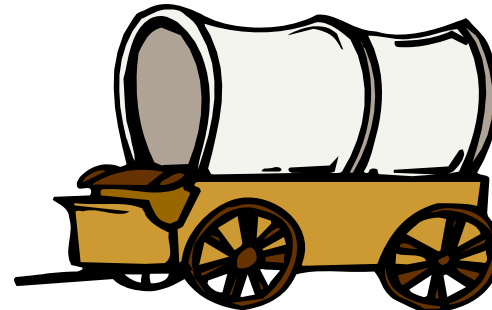
Prior Art 35 U.S.C. 102(a) (Basis for Rejection)	Exceptions 35 U.S.C. 102(b) (Not Basis for Rejection)	
102(a)(1) Disclosure with Prior Public Availability Date	102(b)(1)	(A) Grace Period Disclosure by Inventor or Obtained from Inventor
		(B) Grace Period Intervening Disclosure by Third Party
102(a)(2) U.S. Patent, U.S. Patent Application, and PCT Application with Prior Filing Date	102(b)(2)	(A) Disclosure Obtained from Inventor
		(B) Intervening Disclosure by Third Party
		(C) Commonly Owned Disclosure

Identical?



Invention

It's a trick question!



Prior Art

Identical?

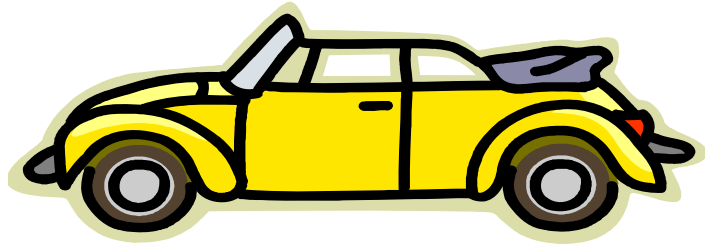
May be

- Wheels
- Soft Fabric Cover
- Can be steered
- Land vehicles
- Seats
- Axel
- Propelled by other than human power

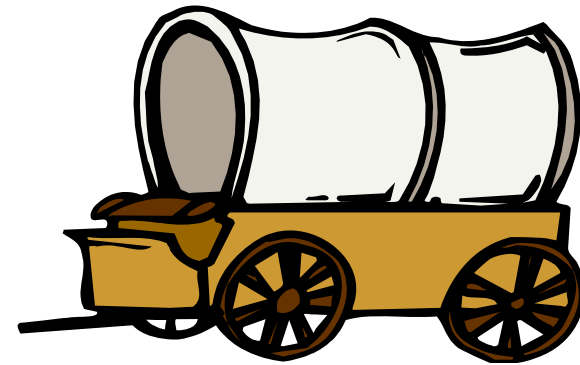
May be not

- Rubber Tires
- Metal versus wood frame
- Power Steering
- Engine versus horses
- Leather versus wood seats
- Windows
- Headlights
- Key
- Doors

Is it Obvious?



Invention



Prior Art

35 USC 103 – The Law

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is **not identically disclosed** as set forth in section 102, if the differences between the claimed invention and the prior art are such that the **claimed invention as a whole** would have been obvious **before the effective filing date** of the claimed invention **to a person having ordinary skill in the art** to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

Understanding Obviousness

35 USC 103 Simplified

- Not Identical
- Claims as a whole are obvious
- Before the effective filing date
- Person having ordinary skill in the art (PHOSITA)

Is it Obvious?

Graham et al. v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), simplified

1. What is the scope and content of the prior art
2. What are the differences between the prior art and the claims at issue
3. What is the level of ordinary skill in the art at the time of the invention
4. Does any objective evidence of nonobviousness exist?

Is it Obvious? (cont.)

KSR Int'l Co. v. Teleflex, 550 US 398, 82 USPQ2d 1385 (2007), simplified

- Reaffirmed *Graham v. John Deere*
- Teaching, suggestion, motivation (TSM) test overly rigid
- Findings of facts
- Teachings of the applied references
- What would a person having ordinary skill in the art (PHOSITA) know and do

Before the effective filing date

- Date application is filed
- Proof of earlier date of invention
 - Conception
 - Reduction to practice
 - Inventor's notebook

Determining level of ordinary skill in the art

- Types of problems encountered in the art
- Prior art solutions
- Rapidity of innovation
- Sophistication of the technology
- Educational level of active workers in the field
- All factors not necessary for every case

Is it an Obvious Difference?

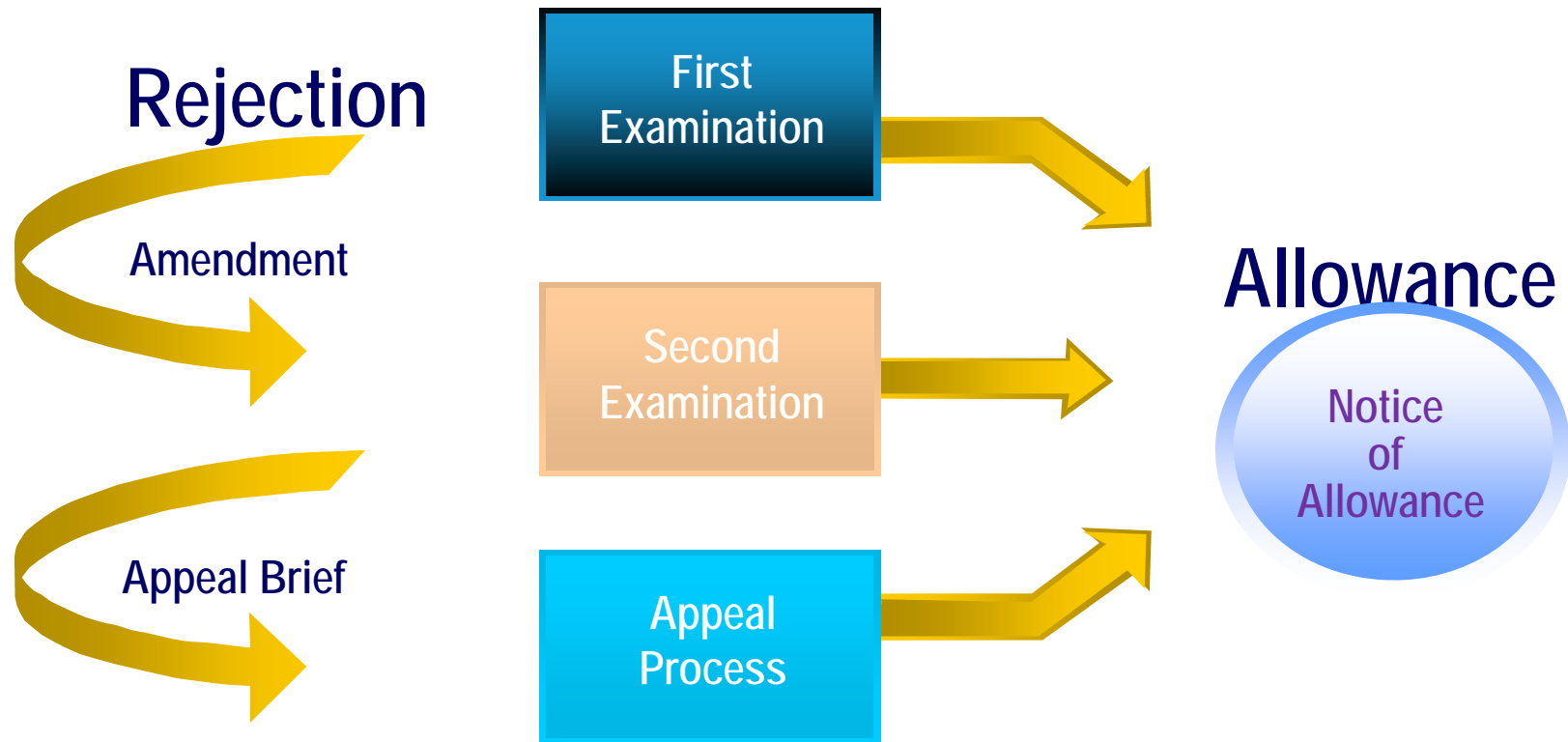
- Comparison between the **claimed** invention and the prior art
- Examiner will determine similarities and differences in structure and function



Secondary Considerations

- Unexpected Results
- Long felt need/Failure of Others
- Commercial Success
- Copying by Others
- Inoperability of Prior Art
- Skepticism of Experts

The Examination Process



Please note that an adverse opinion by the examiner may be correct. In those instances, a patent will not be granted.



Applicant's Rebuttal Arguments to Rejections

- Elements are not combinable
- Destruction of the reference
- Combination of elements works differently than individual elements
- The prior art fails to teach an element
- Non-analogous art
- Impermissible hindsight
- Not an exclusive list of arguments

Allowance and Issue

- **Fees**

- No extension of time permitted

- To check current fee schedule:

- <http://www.uspto.gov/web/offices/ac/qs/ope/fee031913.htm>

- **Amendments after allowance**

- Minor corrections, drawings, formal matters

- **Corrections**

- Inventorship, misspelled words

- **Time to publish patent**



After Patent Grant

- **Protection begins**
- **Maintenance fees**
 - Due at 3.5, 7.5 and 11.5 years
- **Correction**
 - Certificate of Correction
 - Reissue
 - Broadening
 - Narrowing

Resources - www.uspto.gov

The image shows a screenshot of the USPTO website with two callouts. The first callout highlights the 'Learning and Resources' navigation menu item. The second callout highlights the 'Quick Links' dropdown menu, which is expanded to show a list of links for Patents and Trademarks.

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First time here? Let us help you find your bearings.

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Get Going

First time here? Let us help you find your bearings.

Has your invention already been patented at the USPTO?

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Patents Trademarks **Learning and Resources** Quick Links

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- Fees and Payment
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- Patents FAQs
- Trademark FAQs
- Transferring ownership / Assignments Help

Services & Publications

- Electronic Data Products
- Federal Register Notices
- Official Gazette
- Support Centers
- XML Resources
- Classification
- Statistics

Tools & Links

- Operational Status
- Inventors Eye Newsletter
- Subscriptions
- IP Programs and Awards
- More Tools & Links
- Glossary of Terms
- How-to Videos
- Executive Actions

Patents

- PatFT | AppFT: Patents search
- EFS-Web | Forms: Patent filing
- Private PAIR | Public PAIR: Filing status
- PTAB: Patent Trial & Appeal Board
- EPAS | AOTW-P: Record ownership changes & search assignments
- Patent Fees & Payment Information
- MPEP | Classification: Guides & Manuals

Trademarks

- TESS: Search trademark database
- TEAS: Trademark online filing
- TSDR: Status, documents, and certificates
- TTAB: Trademark Trial & Appeal Board
- ETAS | AOTW: Record ownership changes & search assignments
- Trademark Fees & Payment Information
- TMEP | ID Manual: Guides & Manuals

Patent & Trademark Systems Status: Notices of possible system outages

Patent Application

Inventor & Entrepreneurs Resources

- There are a wide variety of resources to help the Independent Inventors and Entrepreneurs
- Pro se, Pro bono, Education & Information, Current Events, State Resources and more
- <http://www.uspto.gov/learning-and-resources/inventors-entrepreneurs-resources>

The screenshot shows the USPTO website's 'Inventors & Entrepreneurs Resources' page. The header includes the USPTO logo, 'UNITED STATES PATENT AND TRADEMARK OFFICE', and navigation links for 'About Us', 'Careers', and 'Contact Us'. A search bar is located in the top right. The main navigation bar features 'Patents', 'Trademarks', and 'Learning and Resources', with a 'Quick Links' dropdown menu. The breadcrumb trail reads 'Home / Learning and Resources / Inventors & Entrepreneurs Resources'. The page title is 'Inventors & Entrepreneurs Resources'. The content is organized into four columns:

- Patents for Inventors:** The patent process can be challenging if you are not familiar with it. Below are links with useful information regarding the patent process.
 - ▶ Patents
 - ▶ Patent Help
 - ▶ Patent Process Overview
 - ▶ Search for Patents
 - ▶ Inventors Assistance Center
 - ▶ Official Gazette for Patents
- Trademarks for Inventors & Entrepreneurs:** The trademark process can be confusing for a beginner, so the links below provide useful information on registering a trademark with the USPTO.
 - ▶ Trademark Basics
 - ▶ Trademark Electronic Search System (TESS)
 - ▶ Trademark Electronic Application System (TEAS)
 - ▶ Trademark Status and Document Retrieval (TSDR)
 - ▶ Electronic Trademark Assignment System (ETAS)
 - ▶ Assignments on the Web (AOTW)
 - ▶ Trademark Trial and Appeal Board (TTAB)
 - ▶ Trademark Manual of Examining Procedure (TMPEP)
- Inventors & Entrepreneurs Assistance:** The Inventors Assistance Center (IAC) provides patent information and services to the public. The IAC is staffed by former supervisory patent examiners and experienced primary examiners who answer general questions concerning patent examining policy and procedure. The Trademark Assistance Center can answer general questions about the trademark process or provide guidance on the type of information to include on a form, but may not provide specific legal advice.
 - ▶ Inventors Assistance Center
 - ▶ Patents Ombudsman Program
 - ▶ BusinessUSA[®]
 - ▶ Trademark Assistance Center
- Education & Information:** Online chat transcripts and additional information for inventors.
 - ▶ Scam Prevention
 - ▶ Provisional Application for Patent
 - ▶ General Information Concerning Patents
 - ▶ A Guide to Filing a Nonprovisional Utility Patent Application
 - ▶ A Guide to Filing A Design Patent Application
 - ▶ Basic Facts About Trademarks
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 - ▶ Non-USPTO Trademark Solicitations[®]
 - ▶ American Inventors Protection Act of 1999
 - ▶ Federal Trade Commission[®]
 - ▶ Consumer Protection[®]
- Pro Se - Pro Bono:** Are you an inventor or small business who has limited resources and needs help applying for a patent on an invention? If so, you may be eligible to receive pro bono ("for free") attorney representation through the Nationwide Pro Bono Program.
 - ▶ Pro Se
 - ▶ Interest Form[®]
 - ▶ Pro Bono
 - ▶ Inventors Eye | Pushing Ahead with Pro Bono Assistance
 - ▶ Patent and Trademark Resource Centers
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- Current Events:** Information about conferences and conventions.
 - ▶ Upcoming Events
 - ▶ Inventors Eye | Events & Announcements
- State Resources:**
 - ▶ United States Map

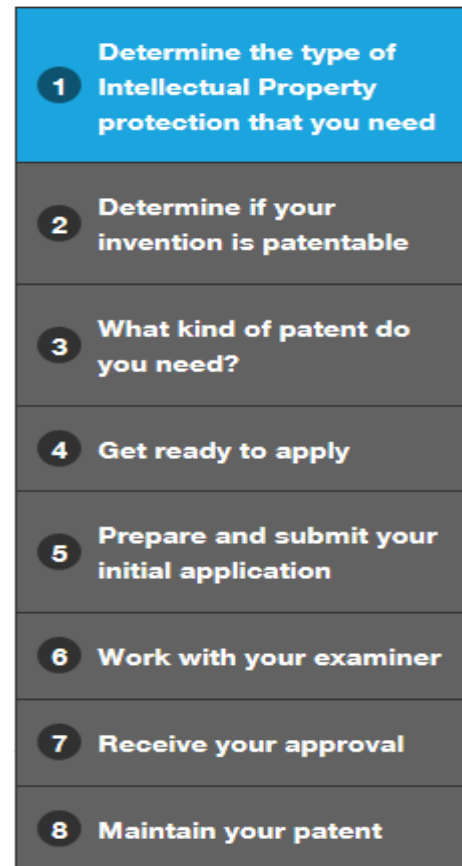


Patent Process Overview

- Patent Law is complex
 - Applicants must make many decisions along the way

What happens after I get my patent?

- Licensing
- Enforcement
- More innovation and competition
- Administrative Trials
- Litigation
- Etc...



Thank You!

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