# FAQs The basics

<table>
<thead>
<tr>
<th>How can inventions be protected?</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the invention is a solution to a technical problem, it can be protected under the <strong>Patents Act</strong>. A patent is granted for new industrially applicable <strong>innovations</strong> as long as they are not in any way part of the existing state of the art (also known as prior art). The Patents Act stipulates clear conditions for the granting of a patent: it must be a part of technology, it must be industrially applicable and it must be new and inventive. The patent for an invention grants protection for a maximum of 20 years.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What are the effects of a patent?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A <strong>patent</strong> gives the owner the (geographically restricted) right to exclude third parties from commercially using an invention for a period of 20 years, i.e. from using, producing, importing, keeping for sale, selling or bringing it to market.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What is a Swiss patent?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Swiss <strong>patent</strong> guarantees protection in Switzerland and Liechtenstein, limited to 20 years, as long as the annual renewal fees are paid. If they aren’t paid, the patent expires meaning that the invention belongs to the public domain.</td>
</tr>
</tbody>
</table>
What can be patented?

Only inventions of a technical nature that can be used commercially can be patented. They must be new and not be derived in an obvious way from the state of the art (also known as the prior art).

What can’t be protected by a patent?

Anything that doesn’t belong to the field of technology such as ideas, lottery and accounting systems, perpetual motion machines (i.e. anything that goes against the first and second laws of physics), non-commercial items, surgical, therapeutic and diagnostic procedures, as well as animal breeds and plant varieties. Inventions that when used, go against public morality or public policy can’t be patented either.

Can a plant variety be protected?

Yes, but not by a patent. Plant variety protection is regulated under the Plant Varieties Protection Act, which is administered by the Federal Office for Agriculture (FOAG).

Can human beings or genetic material be patented?

No. The human body at all stages of its formation and development (i.e. including the embryo) is not patentable. Naturally occurring gene or partial gene sequences are also not patentable; this includes human as well as those of other origins.

See also «Biotechnological inventions»

When are genes inventions and when discoveries?
A discovery is when a gene is merely found and described. An invention is when a gene is isolated in the context of a particular problem and the gene is either part of the solution or the entire solution and the gene is characterised by chemical or physical parameters. To be able to be patented, the requirements concerning novelty, inventive step and industrial applicability must also be met. See also «Biotechnological inventions»

Is it possible to protect a non-patentable aesthetic creation as a design?

Yes. Aesthetic creations are not patentable but they can be protected as a design. The scope of protection is different for each. A patent protects the technical teaching. In contrast, a design protects the aesthetic effect. The “petty patent” (utility model) isn’t recognised under Swiss law.

Can copyright be a substitute for a patent?

No. See Copyright instead of patents.

What is a “utility model”?

This is also called a “petty patent” because the granting procedure is simpler and the term of protection shorter. Germany and Austria, for example, grant such patents with a maximum term of 10 years. The date on an application for a utility model can, however, be claimed as the priority date for foreign patent applications.

What are an employee's rights to something invented at work?

The first step is to ascertain whether this issue is explicitly provided for in the employee's contract. If not, Article 332 of the Swiss Code of Obligations states
that inventions made by employees within the context of their work and in the
fulfilment of their employment obligations (or is involved in doing so) belong to
the employer. Inventions that are made by an employee in the exercise of their
duties but are not a result of specifically fulfilling their contractual obligations are
to be registered with the employer. In turn, the employer has six months to
decide whether to acquire the invention in question or to release it.

What are patent searches?

A distinction is made between the official searches done as part of the patent
examination procedure and private searches that anyone can carry out
themselves or have carried out for them. There are numerous questions – not
only technical ones – that can be resolved through a patent search such as: Is
there a danger that my invention infringes an existing patent? Can I have a
competitor’s patent revoked (nullity)? Is the patent being offered for sale still in
force? Is my invention really new? Has my technical problem already been
solved by someone else? In which field is my competitor particularly active? Who
is the leader in a particular sector? What are the trends in my specialist field?
Such search services are carried out by various providers depending on the needs
of the customer.

Do patents have effects other than granting a monopoly on the
invention patented?

Patents are not considered a monopoly. They simply grant the owner the right to
exclude third parties from commercially using the invention. Published IP rights
are an exceptionally important source of information that aren’t available
anywhere else. In exchange for the patent, the invention must be described so
that a person skilled in the art can reproduce it. In other words, once it has been
issued or published as a patent document (known as transparency), the patent
functions not only as a protective device but also as a technical monograph.

How can patent rights be enforced?
A patent owner can prosecute an infringer civilly and criminally. In Switzerland, the Federal Patent Court is responsible for judging cases of infringement. Before taking legal action, the owner of the patent should notify the infringer of his infringement (known as a warning). Depending on the situation, a warning can be enough to solve the problem without having to take legal action. The next stage is actually bringing the action against infringement before a court of competent jurisdiction. However, it must be borne in mind that the costs for both parties can quickly reach CHF 50,000 or more due to the complexity of the issue (e.g. expertise, legal opinions). It is therefore not uncommon for patent infringement cases to be settled out of court at some point during the legal process. One possible solution for such cases is granting a licence. In all cases, it is recommended that you consult a patent attorney for the purpose of clarifying the situation and deciding on the approach to take.

How do I obtain access to deposited biological material?

A sample of a deposited microorganism can be requested on the basis of legitime grounds from the international depositary authority. Please fill out the request form and send it to us.

FAQ Before you apply for a patent

How can you apply for a patent?

Patents can be filed nationally, in Europe and internationally. Each procedure has its own particularities that need to be considered. It is in the applicant’s interest to receive a filing date as soon as possible because patent protection starts from this date, at least temporarily and under certain provisions, even if the actual patent is granted at a much later date. As soon as the most important conditions for a patent application have been fulfilled, it is advisable to submit your application.

Further information on patent applications to the IPI
What is important to keep in mind when applying for a patent?

The following points should be kept in mind when applying for a patent: The invention must not have been published, exhibited or presented in any way before applying for a patent. This is why you should apply to patent your invention as soon as possible, which also secures the priority date. The one-year priority period should be used to evaluate the commercial chances of the invention; If the chances are good, it is recommended that you file subsequent applications. Although applying to patent your invention is expensive, it would be a shame to let competitor’s exploit your invention simply because you have not protected it appropriately.

Can someone help me with a patent application?

Putting together the documents, going through the granting procedure and adhering to the time limits is a complex task. It is therefore advisable to consult a patent attorney who can also provide expert advice with regards to the various clarifications necessary.

Can minors apply to patent an invention?

Yes, but only with the permission of their legal guardian (parents). If permission is not submitted with the application, it must be later sent otherwise the application will be rejected. However, this presupposes that the IPI notices that the patent applicant is a minor, which is usually not the case because the application does not require the applicant to state his or her age. An exception to the legal age requirement is when the invention is filed within the framework of self-employment or a profession (Art. 412 Swiss Civil Code).

What does a foreign national have to do to be able to file a patent application in Switzerland?
If you do not reside or have a business located either in Switzerland or Liechtenstein, you must specify an address for service in Switzerland or appoint a representative with an address for service in Switzerland. Anyone can be appointed as your representative. Only the European Patent application procedure has restrictions with regard to representation. The list of European professional representatives’ database can be found on the EPO website.

When is it better to choose a national patent?

National patent applications are preferable when protection is needed only in individual countries. It is the only possibility for protecting your invention in a few countries that do not belong to the European Patent Convention states (38 countries as of 1 January 2010) or the Patent Cooperation Treaty states (152 countries, as of 1 January 2017). National applications have the disadvantage that applicants must submit their application to each individual national office in which they want to protect their invention and go through the laborious granting procedures simultaneously.

What are the advantages of a European patent application?

A European Patent (EP) effectively grants protection in every member state of the European Patent Convention designated in the application. This procedure has a big advantage in that the examinations (the examination on filing and the formalities examination, the search as well as the substantive examination) are centralised and therefore only take place once. The grant of the patent is then binding for all of the member states designated.

What are the advantages of an international application (PCT)?

An international application (Patent Cooperation Treaty; PCT) grants protection for an invention in all of the contracting states (138 countries as of 1 January 2008) designated by the applicant. This is a centralised application procedure including searches. However, the substantive examination and the grant of the
patent are done by the national or regional offices named in the application, for example the European Patent Office. Therefore, contrary to popular opinion, there is no worldwide or international patent as such. There is only the possibility to apply internationally.

**How should I decide which path to choose?**

Although each situation is unique, here are a few questions that can help you make your decision: What are the specific benefits of obtaining patent protection (financially, not only ideally)? Is protection in Switzerland sufficient, or is it worthwhile applying to protect your invention in other countries (production, licensing, exporting, enforcement)? What is the extent of the funds available for investing in foreign patents? Should a patent be filed simply as a preventative measure to block competitors from going into a special field in which you don’t currently want to go at the moment?

**How do you get protection in other countries?**

To legally protect your IP right in several countries, you have to apply to each country individually. The Paris Convention has a provision under which the date of an initial application in a Paris Convention member state becomes the date for all subsequent applications in other Paris Convention member states (known as a priority right) as long as subsequent applications take place within a certain period of time after filing the first one. Today, there are international IP rights systems for every field of intellectual property, which makes it possible to attain an IP right in multiple countries with simplified formalities (e.g. the Hague Act for designs, the Madrid System for trade marks, the EP/PCT for patents).

**Which countries require that the details of all inventors are listed in a PCT application?**

Only the United States. Information for individual countries regarding this requirement can be found in the PCT Guide for Applicants, section B1 (countries) and B2 (international organisations).
Can an invention be protected worldwide? If so, how?

An invention can be protected worldwide through national applications in every individual country of interest, or by filing an application through an international or regional patent system. However, it is necessary to make a realistic assessment of the costs and benefits for such applications.

FAQ Application and examination in Switzerland

What are the formalities necessary for patent protection?

A patent application must include a description of the invention, the patent claims (what is actually being protected), an abstract and, where necessary, technical drawings. In addition, the application fee must be paid. These requirements are examined by the IPI, whereas novelty and inventive step are not (see Search for a Swiss Patent Application). After the fourth year, an annual renewal fee must be paid.

Why are inventions not examined for novelty in Switzerland?

An examination for novelty increases the expense of a patent procedure, whereas the aim of a Swiss patent is to be a cost-effective IP right. Even if the examination does not include novelty, it is still a requirement for patentability and is legally contestable. For this reason, it is in the interest of every applicant or inventor to make a careful analysis of the state of the art first. As part of the application process, we offer an optional Search for a Swiss Patent Application in which we carry out a search for you that closely follows the European standard by assessing the novelty and inventive step of your invention. EPC and PCT patent procedures examine novelty. In the national procedure, there is also the possibility of an optional international-type search (fees are paid to the European Patent Office).
### How can I find out the state of the art in a certain technical field?

Patent specifications are the most important sources of technical information. Thanks to the Espacenet database, it is possible to carry out free searches in patent documents published worldwide. Our website also contains links to other patent collections that can be accessed online. It is recommended that a state of the art search (also known as a prior art search) is carried out before filing a patent application. There are various providers who offer such search services. For patent applications, you can also take advantage of the Search for a Swiss Patent Application offered by the IPI.

### Where can I deposit biological material?

Are you looking for a recognised international depositary authority for biological material in accordance with the Budapest Treaty? Then the following link is the right thing for you: List of all depositary authorities in accordance with the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (pdf).

### Where is the inventor mentioned?

The inventor must be declared by name in the published patent application, the patent register, the patent specification and the publication of the granted patent.

### When and how is an inventor notified that his invention will be granted a patent?

It takes on average three to five years from filing the application to the patent
being granted, although you can also request an expedited procedure. However, an invention is already provisionally protected from the date the application is filed so that the applicant is in no way disadvantaged. Although it generally isn’t necessary to grant the patent earlier, the applicant can shorten the entire process by requesting an expedited substantive examination.

**When is an invention considered “new”?**

An invention is considered new when it doesn’t belong to the state of the art (also known as prior art). The state of the art includes everything that was publicly available before the application or priority date through written or oral descriptions, through use or in any other way. Novelty is worldwide and absolute. In order to determine the novelty of your invention, we offer a Search for a Swiss Patent Application.

**How long does a patent application remain unpublished in Switzerland?**

In Switzerland and Liechtenstein, the application is usually published 18 months after the application or priority date. This is in keeping with typical international practice: in most countries as well as in the EP and PCT procedures, the application is also published after 18 months.

**If several inventors have worked on an invention, how can all the rights to a patent be transferred to just one of them?**

This can be done through a written declaration (notarised signature). The transfer is independent of entry in the patent register (Art. 33, PatA). If the transfer took place before the patent application was filed, it must be noted under the mention of the inventor. Note that in the USA, it is mandatory to declare all inventors.
Who can make claim to a priority right?

Members of signatory countries to the Paris Convention for the Protection of Industrial Property (the Paris Convention), members domiciled in Paris Convention countries, members of a country with a reciprocal agreement with Switzerland as specified in Article 17 and 18 of the Swiss Patents Act, and members of World Trade Organization (WTO) countries.

Is it possible to make up for a missed deadline?

If the patent applicant or patent holder has failed to meet a deadline set by law or by the IPI, he or she may request further processing from the IPI. The request must be filed within two months after receipt of the notification of the expired time limit, or at the latest within six months of expiry of the missed deadline. Within this time period, all of the required actions must be taken, the patent application completed if necessary, and the corresponding fee for further processing paid. If the request is accepted, the situation which would have existed had the time limit been respected will be reinstated. However, further processing is excluded in cases of expiration of the following deadlines (see Art. 46a para. 4 of the Patents Act):

- Time limits that do not have to be observed vis-à-vis the IPI
- Time limits for filing a request for further processing
- Time limits for filing a request for re-establishment of rights (see below);
- Time limits for filing a patent application accompanied by a claim for the right of priority and for the declaration of priority
- The time limit for the modification of technical documents
- Time limits for applying for the grant of a supplementary protection certificate
- Time limits laid down by ordinance where failure to comply with that time limit excludes further processing.

What other possibilities are there to make up for a missed deadline?

If the patent applicant can show that he was prevented from meeting a time limit set by the law, by the ordinance or by the IPI through no fault of his own,
he will have his rights re-established upon request. The request must be submitted within two months of the removal of the cause, or at the latest one year after the expiry of the time limit; simultaneously the omitted act must also be completed. The re-establishment of rights is not possible if the time limits for requesting the re-establishment itself has expired. If the request is accepted, the situation which would have existed had the time limit been respected will be reinstated.

Where and in what form is it possible to appeal against a decision made by the IPI?

Decisions by the IPI in patent matters may be appealed to the Federal Administrative Court.

Is worldwide protection guaranteed at the moment of registration?

No, but the first filing date determines the priority period during which subsequent applications can be made using this original date.

Frequently asked questions – Post grant

Within what period of time must the renewal fees be paid?

Annual renewal fees must be paid in advance for every patent application and patent beginning the fourth year after filing the application. They are due every year on the last day of the month in which the patent application was filed. The fees must be received within six months of the due date. For fees received within the last three months of the due date, a surcharge must be paid.

Must a transfer of rights be entered in the patent register?
No. There is no such requirement. The legal transfer of the patent application and the patent must be made in writing for it to be valid, but the transfer does not have to be entered in the **patent register**. However, until the entry in the patent register is made, legal action can be taken against the previous owners. The rights of third parties who are not entered in the patent register have no effect against the claims of a person who acquires the patent rights in good faith.

**For what reasons can a patent expire?**

By not paying the annual renewal fees; if the patent is revoked through **opposition proceedings**; if it is declared **invalid** by a court; or if the patent owner waives it in writing.

**Who can appeal to a court for a patent license and for what reasons?**

Three years after the patent has been granted, but no earlier than four years after the patent application, anyone who can prove an interest has the right to appeal to a court for a non-exclusive licence for the use of the invention if the patent owner has not sufficiently used it in Switzerland up to the time of the appeal and does not wish justify this omission. Sufficient use of an invention in Switzerland also includes importing. *(Art. 37 PatA)*

**Are there standard licensing agreements?**

Licencing agreements are not regulated in detail by law therefore it is worth closely examining the various clauses of such an agreement. Various organisations have standardised agreements available, but again it is worth involving an experienced **patent attorney** in such matters.

**What is an SPC?**
An SPC is a **Supplementary Protection Certificate**. It is granted for active ingredients that must be federally approved such as medicinal products and pesticides. These substances cannot be brought de facto to market without permission (market authorisation) from the appropriate office (i.e. Swissmedic or the [Federal Veterinary Office](https://www.bvl.admin.ch)). SPCs are valid for a maximum of five years. An SPC requires official approval for the active ingredients and a valid patent.

Can a patent be challenged by a third party?

Yes. There are two possibilities:

* Anyone can file an **opposition** with the IPI within nine months of the patent being granted. A CHF 800 fee must be paid and the grounds for the opposition must be made in writing. However, it is only possible to oppose the grant of a patent if it contains inventions that are not patentable under law ([Art. 1a, 1b and 2, PatA](https://www.admin.ch/index.php?lang=en&n=176717284785999)). Such inventions are, for example, the human body at all stages of its formation and development or naturally occurring genes or partial sequences of genes. Opposition can also be filed against inventions, whose application would be contrary to public convention or morality. The IPI decides whether the opposition should be rejected, whether the patent should be revoked or whether it should be kept in force with a modified scope.

* If the novelty, inventive step or disclosure of the invention (i.e. the invention is not disclosed in such a manner that a person skilled in the art could reproduce it based on the patent), an **action of nullity** may be filed with a civil court in Switzerland. A nullity action may also be filed against a patent that contains inventions that are not patentable or with a scope of protection that has been extended beyond the original claim. A nullity action can be filed during the entire lifetime of the patent.

How can you protect yourself against patent infringement and what should you do if it occurs?

Patent infringements can be determined by a constant monitoring of the market and the competition. Knowledge of company patents is a prerequisite. This information makes it possible to effectively monitor for types of infringement by competitors both domestically and abroad. The simplest way is to monitor the
market at trade fairs because this is where new products that could most likely conflict with an existing product are usually on offer. Alternatively, you can instruct a search service provider to monitor the market for you. Such a search gives you periodic information about newly published patents and patent applications in your technology sector. You can discover potential patent infringements at an early stage, and at the same time keep up to date on the newest technology developments. Such search services are offered by various providers.

Is a Swiss IP right also valid in other countries and vice versa?

National laws governing intellectual property generally refer only to actions that are carried out in the respective country where the law was enacted (e.g. copying, reproducing, keeping for sale, advertising, importing, exporting or selling). Therefore, a patent, a registered trade mark or a registered design is only effective in the country in which the IP right was granted or registered. There is no effect in other countries (with the exception of patents granted in Switzerland or Liechtenstein).