

HOW TO FILE A PATENT IN LUXEMBOURG AN APPLICANT'S GUIDE



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère de l'Économie

Office de la propriété intellectuelle

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AN APPLICANT'S GUIDE

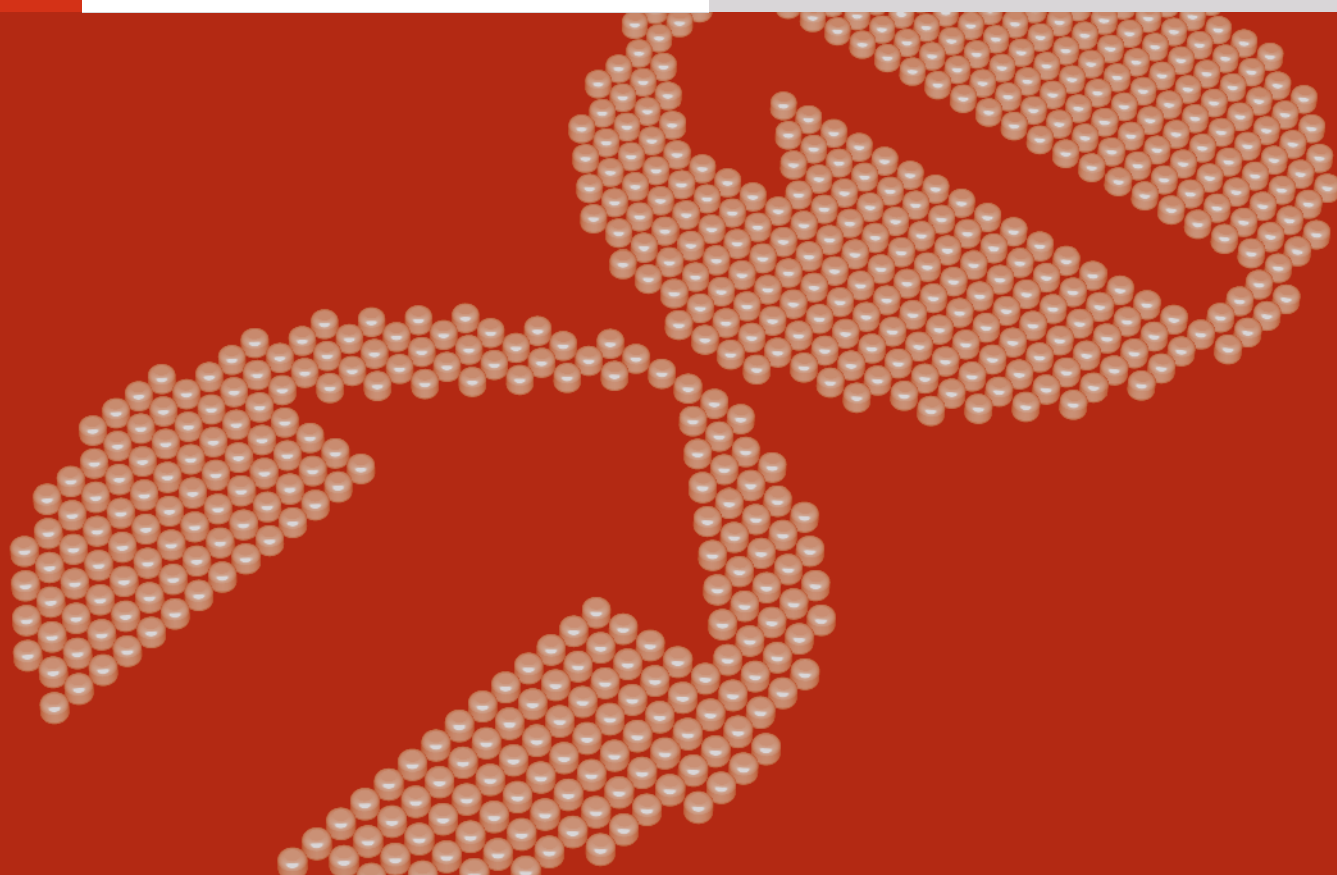


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A patent can be considered as a contract entered into between the inventor and the Government:

- ➔ on one hand, the inventor describes his invention – which is still kept secret – to the Government and gives it permission to make the description of the invention available to the public after a certain time (generally 18 months);
- ➔ on the other hand, the Government grants the inventor or his successor in title a temporary exploitation monopoly over the invention, on the condition that the invention claimed by the inventor provides a technological advantage in relation to the state of the art already made public.

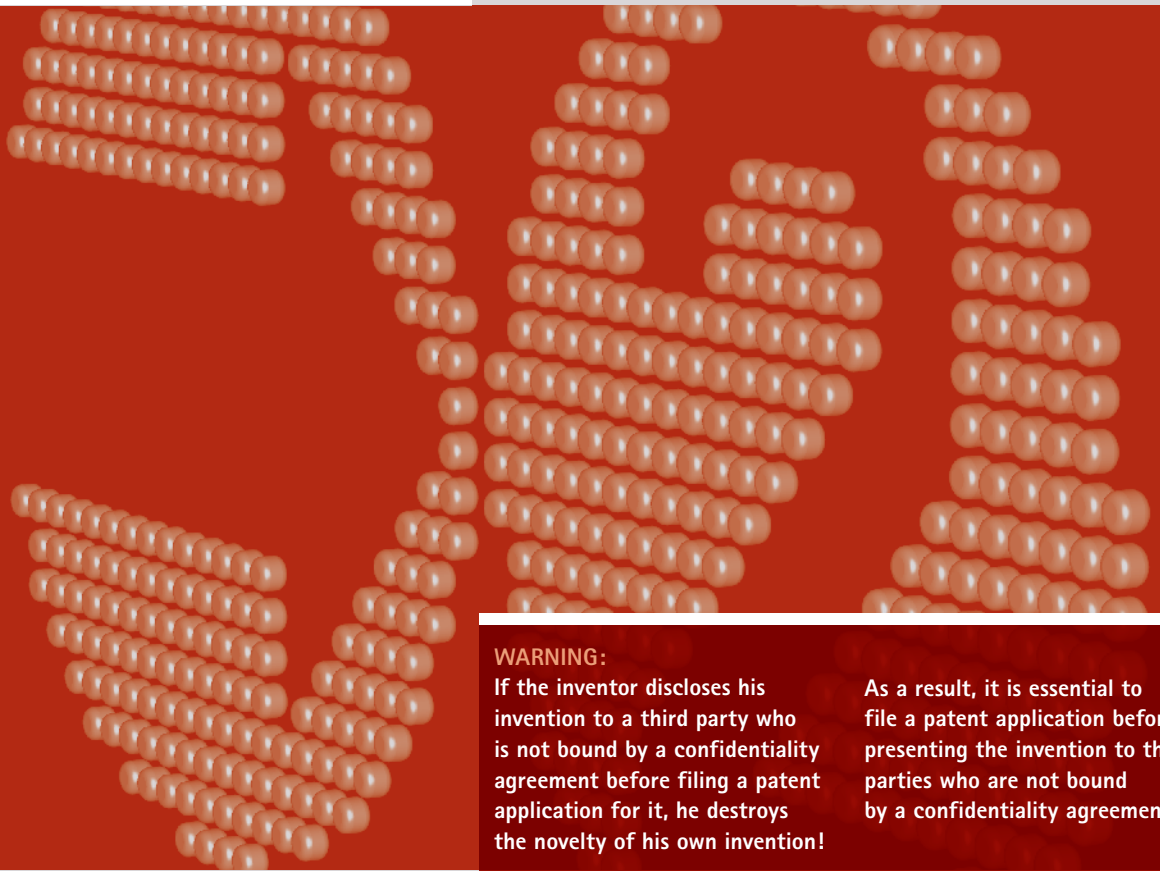
It should also be noted that the patent constitutes an element of an individual's intangible assets and is more precisely part of that person's intellectual property.

Other than patents, a person's "intellectual property" might include:

- ➔ trademarks of goods (products) and services, which grant an exclusive right regarding the trade names, logos and other signs used to distinguish the products or services of a person or company;
- ➔ industrial designs, which grant an exclusive right regarding the novel aspect (the industrial esthetics, the design) of a product which has a utilitarian function;
- ➔ copyrights and related rights, which protect literary or artistic works as well as computer programs and databases;
- ➔ manufacturing secrets, i.e. the know-how over which the person has exclusive control because he keeps it secret.

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WHAT CAN BE PATENTED?



WARNING:

If the inventor discloses his invention to a third party who is not bound by a confidentiality agreement before filing a patent application for it, he destroys the novelty of his own invention!

As a result, it is essential to file a patent application before presenting the invention to third parties who are not bound by a confidentiality agreement.

Patents are granted for novel inventions which involve an inventive step and are susceptible of industrial application.

To determine whether an invention is patentable, ask yourself the following four questions:

Question No. 1: Is it an invention?

Patent law does not provide a definition of an invention. It simply stipulates that certain elements are not considered as an invention and are therefore excluded from patentability insofar as they are claimed as such. In particular, this involves:

- ➔ discoveries and scientific theories and mathematical methods;
- ➔ aesthetic creations;
- ➔ schemes, rules and methods for performing mental acts, playing games or doing business, as well as computer programs;
- ➔ presentations of information.

Question No. 2: Is the invention novel?

If it is possible to prove that the object claimed in the patent application was already part of the state of the art accessible to the public before the filing date of the patent application, then the invention is not novel.

The state of the art to be taken into consideration in order to assess the patentability of an invention includes everything made accessible to the public by a written description, oral description, usage or any other means, without restrictions in terms of time and space.

WARNING:

"Involving an inventive step" absolutely does not mean that the invention must possess pioneering qualities. Simple improvements or modifications can also involve an inventive step.

As a result, the following are in particular part of the prior art which can be enforced against the patentability of a claimed invention:

- ➔ all characteristics described in a document published anywhere in the world;
- ➔ all characteristics which can be inferred from a product placed on the market;
- ➔ all characteristics which can be perceived by the public when a product is displayed;
- ➔ all information disclosed to a client through documents, drawings or presentations, on the condition that there is no confidentiality agreement (at least tacit) regarding this information.

Furthermore, an invention claimed in a Luxembourg patent is also not novel if it is described in a patent application which is effective in Luxembourg, which was not published until after the filing date of the Luxembourg patent, but which has a filing or priority date prior to the filing date of the Luxembourg patent. In conclusion, the popular saying "first come, first served!" also applies to patents.

Question No. 3: Does the invention involve an inventive step?

If it is possible to prove that, for someone skilled in the art, the claimed invention follows obviously from the state of the art accessible to the public before the filing date of the patent application, then this invention does not involve an inventive step.

In other words, in order to have an inventive step, the prior art in its entirety must not lead someone skilled in the art – who is faced with the technical problem at the root of the invention – to adapt or modify the closest state of the art to the invention in the manner claimed in the patent.

Question No. 4: Is the invention susceptible of industrial application?

An invention is considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

Not considered to be inventions susceptible of industrial application are, in particular, methods for surgical or therapeutic treatment of the human or animal body, and diagnostic methods applied to the human or animal body. This exclusion does not, however, apply to products and devices for the implementation of one of these methods. Thus, medicinal products and surgical instruments can most certainly be patented.



The right to a patent belongs to the inventor, respectively to his successor in title.

The inventor is the physical person, i.e. the man or woman, who developed the invention. The successor in title is a natural person or a legal entity (a company, for example) which has acquired the rights to the invention from the inventor.

In particular, if an invention is made by an employee while performing either an employment agreement including an inventive mission which corresponds to his effective duties, or in the framework of studies or researches explicitly entrusted to him, then this invention belongs to the employer.

The same is true when the invention is made by an employee during the performance of his duties, in the field of the company's activities, or through the knowledge or use of techniques or resources specific to the company or data procured by the company.

A patent application can be filed by any physical person or legal entity. The applicant is considered to be authorized to exercise the patent rights and will, after grant, be the holder of the patent. If the applicant is not the inventor, then the applicant must be able to prove how the rights to the invention were acquired from the inventor.

It should also be noted that a patent application can be filed jointly by several applicants, who will then be co-owners of the patent. It is then recommended to establish a set of rules determining the rights and obligations of the co-owners.

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HOW DO I FILE A LUXEMBOURG PATENT APPLICATION?

4.1 Where do I request grant of a Luxembourg patent?

A person wishing to obtain a Luxembourg patent must file a patent application according to legal and regulatory provisions at the:

Ministère de l'Economie
Office de la propriété intellectuelle
19-21, bd. Royal
L-2914 Luxembourg

Tel. +352 247 - 84156
Fax +352 247 - 94113
Email dpi@eco.etat.lu
www.gouvernement.lu/meco

4.2 Which are the documents that make up a patent application?

A Luxembourg patent application must contain:

4.2.1 A request for grant of a patent

The request for grant must be presented (in triplicate) on a form provided by the Ministère de l'Economie, Office de la propriété intellectuelle.

4.2.2 A description of the invention

The description of the invention must:

- ➔ state the title of the invention;
- ➔ briefly specify the technical field to which the patent relates;
- ➔ indicate the state of the art, insofar as the applicant is aware of it, if applicable using document citations;
- ➔ describe the invention as it is characterized in the claims, if possible in the form of a solution provided to a technical problem; also state the advantages resulting from the claimed characteristics;

- ➔ briefly describe the drawings, if there are any; and
- ➔ provide a detailed description of at least one embodiment of the invention, including, if applicable, examples or commented references to the drawings.

The description must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

4.2.3 Claims

The claims define the object which falls under the exploitation monopoly granted by the patent. This object can be a product, a method, a device or a use.

We distinguish between main claims (or independent claims), which provide the most general definition of the object for which the protection is claimed, and the subsequent claims (or dependent claims), which complete the definition provided by a main claim by adding additional characteristics of the invention to it.

It is the object as defined by an independent claim which must meet the criteria for patentability. It is then necessary to include sufficient characteristics of the invention in this independent claim to be able to prove that the object explicitly defined in this claim is novel and involves an inventive step, without, however, needlessly limiting the field of protection defined by this claim.

It should also be noted that the claims must be clear and concise and be based on the description.

4.2.4 The drawings to which the description or claims refer

Drawings must be provided when they are necessary to understand the invention. In general, they contain reference numbers which identify the elements described in the detailed description of at least one embodiment of the invention. These must be technical drawings and not photographs.

4.2.5 An abstract

The abstract is a concise summary (maximum 150 words) of what is described in the description, claims and drawings of the application. The abstract is used exclusively for technical information purposes and is not taken into consideration to assess the scope of the requested protection. It may be filed within a period of 4 months after the filing date.

4.3 Are there formal requirements to be observed?

The description, claims, drawings and abstract must be produced in triplicate and meet certain conditions of form concerning their presentation. These conditions of form are specified by the "Grand-ducal regulation of November 17, 1997 concerning the procedure and administrative formalities related to patents" [*Règlement grand-ducal du 17 novembre 1997 concernant la procédure et les formalités administratives en matière de brevets d'invention*], Articles 6 to 10 (see appendix).

4.4 What language do the technical documents have to be prepared in?

The technical documents of the application can be prepared in French, German, English, or even Luxembourgish. However:

- ➔ if they are prepared in English, a translation of the claims into French or German must then be filed within one month following the filing date of the application;
- ➔ if they are prepared in Luxembourgish, a translation of all technical documents into French or English must be filed within one month after the filing date of the application.

4.5 Are there fees to pay upon filing?

Filing a patent application requires the payment of a filing fee, which must be paid no later than one month after filing of the application. It must be paid to:

Administration de l'Enregistrement et des Domaines
(see address and other contact information in
appendices 1 and 2)

stating the name of the applicant, the filing date and the nature of the fee being paid.

A fee scale is appended and available on the website of the Ministère de l'Economie, Office de la propriété intellectuelle.

4.6 Can several inventions be covered by one patent application?

In a patent application, only inventions so linked as to form a single general inventive concept can be claimed. If you want to protect inventions which do not meet this requirement of unity of invention, you must file several patent applications. An initial application can also be split into one or several divisional applications at a later stage.

4.7 How do I claim priority of a prior application?

If the applicant wishes to claim the priority, in his Luxembourg patent application, of an earlier patent application of which he or his successor in title is the applicant, he must make a declaration of priority, either in the request for grant or in a separate document filed within four months of the filing. This deadline may be extended by two months upon request. Within this period, the applicant must also provide a copy of the prior application and a certificate of filing from the patent office which received this application. If the earlier application is written in a language other than French, German or English, the applicant must file a translation in one of these languages.

If the applicant of the Luxembourg patent claiming a priority is not identical to the applicant of the earlier application for which priority is claimed, then the declaration of priority must be accompanied by a deed of transfer for the right of priority.

(see also 9.2)

5.1 Is it possible to regularize the application after filing?

If a filing date has been granted to an application, but this application does not meet the other legal or regulatory provisions, the holder of the application is, in principle, asked by the department to regularize this application.

However, the patent application is considered to be withdrawn if:

- ➔ payment of fees has not been made within one month following the filing date of the patent application;
- ➔ in case of filing of a patent application written in English, a translation of the claims into French or German is not provided within the period of one month from the filing date of the patent application; or
- ➔ failure to designate the inventor is not corrected within sixteen months from the filing date of the application, or if a priority is claimed, from the date of the priority.

If, in the application, reference is made to drawings and these drawings were not filed on the filing date of the application, the filing date of the application will be the date on which the drawings are filed. If the applicant wishes to maintain the initial filing date, the references to the drawings in the application will be considered to have been removed.

In other cases, regularization of the patent application must be done within four months from the filing date of the application, otherwise the application will be rejected.

5.2 Will the Luxembourg patent application be subject to a patentability examination?

A Luxembourg patent application is not subject to a patentability examination prior to grant of the patent. The Luxembourg administration therefore does not reject a patent application which does not meet the criteria for patentability (see also 5.8).

5.3 How do I get a patent for a maximum duration of twenty years?

If the applicant wishes to obtain a patent for a maximum period of twenty years, he must present, within 18 months of the filing date of his application (or from the priority date, respectively, if a priority is claimed):

- ➔ either a request for the establishment of a search report;
- ➔ or a validation request for a search report already prepared by the European Patent Office for an application concerning the same invention.

If the applicant does not meet the criteria above concerning the prior art search, then the granted patent will have a maximum duration of six years.



5.4 What is the document search?

If the applicant presents a request for the establishment of a search report, then the European Patent Office will perform a document search regarding the invention claimed in the patent application.

Cited in the search report are documents of the state of the art which are deemed to be relevant with regard either to comprehension of the invention (class A documents), or evaluation of the novelty and inventive step of the claimed invention (class X or Y documents).

Since 2007, the search report is accompanied by a written opinion from the European Patent Office on whether the invention appears to be novel, involve an inventive step and be susceptible of industrial application.

The search report is sent, together with the copies of the cited documents, to the applicant. A copy of the search report is also included in the public patent file, where it can be viewed by any third party who wishes to get an idea of the validity of the patent.

If the applicant requests the establishment of a search report upon filing of his Luxembourg patent application, this report will normally be available before the end of the priority year of this application. This way, the applicant can assess his chances of obtaining a patent, before making a decision regarding filing patent applications abroad.

A document search can also be done independently from a patent application procedure. The purpose of a preliminary search is to know the state of the art. It will help the company or inventor in his patent application strategy. The preliminary search report is made up of patent references which are technically close to the invention. The preliminary search subjects can also be the subject of systematic monitoring in the framework of a technological watch. The searches are then done at regular intervals and updated systematically.

Preliminary searches can be requested from the "Centre de Veille Technologique" (CVT – see appendix 2 for contact information).

5.5 When does the application become accessible to the public?

The patent application file is made accessible to the public at the end of a period of eighteen months from the filing date of the application or from the priority date if a priority has been claimed. However, the patent application file may be made public before the end of this period upon request by the applicant.

A patent application can therefore be kept secret for eighteen months!

5.6 Are there possibilities to amend the application?

The applicant has the right to make changes to the claims, description and drawings, and can do this at several moments of the grant procedure:

- ➔ once, until the introduction either of the request for establishment of the search report, or of the validation request for a search report;
- ➔ once, within four months after either receipt of the search report, or filing of the validation request for a search report; and
- ➔ once, in case of filing of a divisional application.

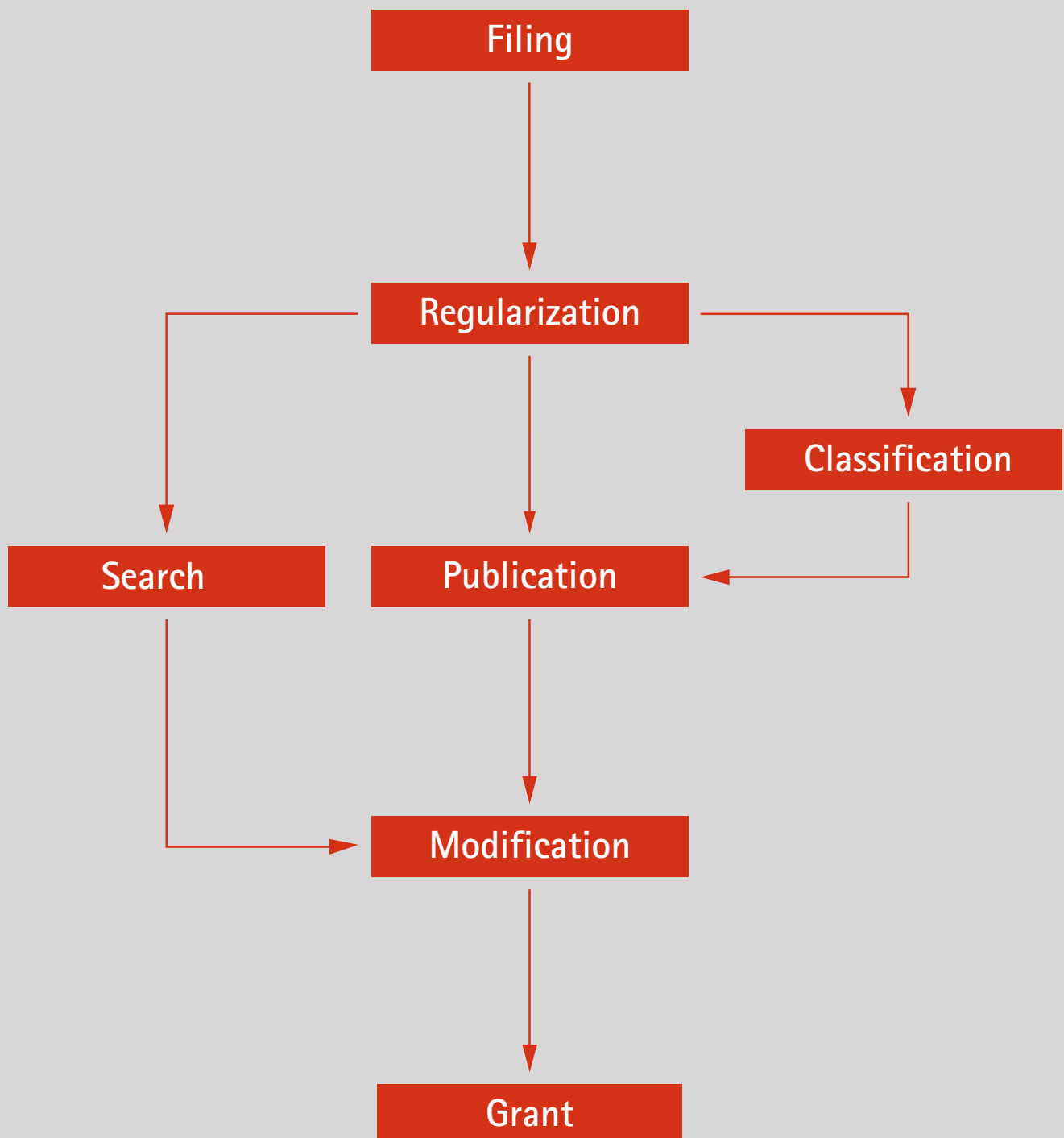
As a general rule, a patent application cannot be modified such that its object extends beyond the content of the application as it was filed initially.

5.7 How and when is the patent granted?

The title constituting the patent is granted in the form of a decree by the competent Minister.

The grant of a patent for a maximum duration of six years takes place without delay after the application file is made available to the public. A patent with a maximum duration of twenty years is granted upon expiration of the period granted to the applicant to amend the application after receipt of the search report.

GRANT OF A LUXEMBOURG PATENT



5.8 Is there a guarantee concerning the validity of the granted patent?

The grant of Luxembourg patents is done without prior examination of the patentability of the inventions, without guarantee as to the accuracy of the description and at the risk and peril of the applicants.

In the case of a dispute, the court will have to decide on the validity of the patent. The grounds for nullity of a patent are the following:

- ➔ the object of the patent is not patentable, in particular because it is not novel, it does not involve an inventive step or it is susceptible of industrial application;
- ➔ the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- ➔ the subject-matter of the patent extends beyond the content of the application as it was filed;
- ➔ the protection conferred by the patent was extended after its grant;
- ➔ the holder of the patent did not have the right to obtain the patent because he is not the inventor or the successor in title.

5.9 Do I have to pay fees in order to maintain a patent in force?

Starting with the third year from the filing of a patent application, annual fees must be paid to maintain a patent or patent application in force. These fees are due on the last day of the month of the filing date of the patent application and are payable in advance for the coming year.

They can still be validly paid within six months of the due date, subject to simultaneous payment of a surcharge. The amount of the annual fee to be paid increases progressively with the lifetime of the patent. The annual fees should be paid to:

Administration de l'Enregistrement et des Domaines
(see address and other contact information in appendices 1 and 2)

stating the patent number, filing date and nature of the fee being paid.

A list of the fees is attached to this guide and available on the website of the Ministère de l'Economie, Office de la propriété intellectuelle.

6.1 How is the scope of the protection of the patent determined?

The scope of the protection of the granted patent is determined by the content of the claims. The description and drawings are, however, used to interpret the claims.

6.2 What does exploitation monopoly mean?

The patent grants the right to prohibit any third party from direct and indirect exploitation of the invention.

"Direct exploitation of the invention" means:

when the object of the patent is a product:

- ➔ manufacturing, offering, putting on the market or using, or importing or possessing this product for the aforementioned purposes;

when the object of the patent is a method:

- ➔ using this method and offering its use over the Luxembourg territory;
- ➔ offering, putting on the market or using, or importing or possessing for the aforementioned purposes, the product obtained directly by the method which is the object of the patent.

"Indirect exploitation of the invention" refers to the delivery or offer of delivery, over the Luxembourg territory, to a person other than the one authorized to use the patented invention, of essential means for implementing this invention.

6.3 Is there any protection for the period prior to grant of the patent?

It is only after grant of the patent that the patent holder has the right to prohibit any third parties from using the invention. For the period between the date on which the patent application file was made accessible to the public and the grant date of the patent, the holder can, however, claim reasonable compensation from any third party who, during this period, used the invention as defined in the granted patent. It should be noted that the applicant can also start this period of compensation by sending the concerned third party a certified copy of the patent application before the patent application file has been made accessible to the public.



7.1 When is a patent infringed?

In principle, patent infringement occurs when a third party, who does not have permission from the holder of the patent, directly or indirectly exploits the invention as defined by at least one of the patent's claims.

7.2 How can the infringement be proven?

In principle, the burden of proof of the infringement falls to the patent holder, who has powerful means to prove the infringement. The President of the district court can authorize the patent holder to have one or several sworn experts proceed with a detailed description of the allegedly infringed objects as well as instruments which were used to commit the alleged infringement. The patent holder may even be authorized to have a bailiff confiscate the cited objects and instruments.

7.3 What are the penalties for infringement?

Patent law provides severe measures to punish infringement.

Infringement proceedings are the sole jurisdiction of the district court. When there are serious indications of infringement, the President of the court may, upon request by a person entitled to bring proceedings for infringement, pronounce an interim order to the alleged infringing party to provisionally stop the activity considered to constitute infringement.

If the infringement suit is recognized as being founded, the court orders the infringer to:

- ➔ definitively stop the infringement; and
- ➔ pay monetary damages as compensation for the losses caused to the applicant.

The stop order may be accompanied by a penalty. The court may also authorize the publication of the ruling or an excerpt thereof in one or several newspapers, at the cost of the infringer. Upon request by the injured party and insofar as the measure is necessary, the court may also order the confiscation or destruction, respectively, of the objects recognized as infringing and of the instruments, devices or means specially intended to perform the infringement.

The patent laws do not, however, provide penal sanctions for infringement.





The patent not only constitutes a means which can be used by the patent holder to prevent others from copying the claimed invention. It also constitutes an asset for the holder which can be sold, contributed to a company, mortgaged or licensed.

If the patent holder cannot use or manufacture his invention himself, he has the option of granting a patent licence. The patent licence is a contract between the holder of the patent and a third party (called the licensee), in which the patent holder authorizes the licensee to use the patented invention. In return, the licensee commits to paying the patent holder royalties, i.e. licence fees proportional to the production volume or the revenue earned thanks to the invention.

The patent holder can guarantee the licensee exclusive utilisation of the patented invention in a State. In this case, an exclusive licence is granted. He can, however, also authorize the licensee to use the invention, while also reserving the right to use the invention himself and/or grant similar rights to other licensees. In this case, a non-exclusive licence is granted.

A patent can also be transferred in whole or in part.

In conclusion, the patent constitutes an effective and flexible way to exploit an invention.

9.1 How do I obtain a territorial extension of the protection?

A Luxembourg patent only covers the territory of the Grand-Duchy of Luxembourg.

However, given the small size of the Luxembourg market, any applicant for a Luxembourg patent should consider the profitability of his invention in a larger market. He should therefore also consider protecting its development on foreign markets, either in order to use it himself on these same markets in the framework of the monopoly granted by the patent, or in order to grant, in return for the payment of royalties, exploitation licences to third parties.

In order to obtain protection of the invention in other countries, the applicant must file, after filing his Luxembourg patent application, parallel patent applications in these countries. This process is made easier by using the priority right attached to the Luxembourg patent application and various patent cooperation conventions.

9.2 How do I take advantage of the right of priority?

A person who has filed a first patent application for an invention in Luxembourg enjoys, for a period of twelve months after the filing date of this application, a right of priority in order to perform, for the same invention, a filing of parallel patent applications in all states having signed a convention on the recognition of the right of priority (in particular the "Paris Convention").

Benefiting from the right of priority means that for parallel patent applications which claim the priority of the Luxembourg patent application, the Luxembourg filing date will replace the actual filing date regarding the state of the art to be taken into consideration in order to assess whether the invention is novel and involves inventive step.

In conclusion, after filing a first patent application in Luxembourg for a given invention, the applicant can freely disclose this invention. These disclosures do not affect the patentability of later patent applications which benefit from the priority of the Luxembourg patent application. It should be noted that an agreement on recognition of the right of priority currently binds nearly all States.

9.3 Are there international treaties to facilitate a territorial extension of protection?

Among the international treaties facilitating a territorial extension of protection, the two most important ones are the "Patent Cooperation Treaty" and the "European Patent Convention".

The Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty today brings together more than 140 States. This treaty makes it possible, by filing a single patent application (the "PCT application" or "international application") and through a centralized procedure establishing a report on the patentability, to delay, without losing the right of priority, the national filing formalities in the member States for 30 months from the priority date (for certain member States, this period is even 31 months).

In other words, with a relatively small investment for an international application, the applicant can reserve, nearly worldwide, for 30 months, an option to protect his invention. At the end of these 30 months, the applicant will normally have the necessary information to assess in which countries an investment in patent protection is worthwhile.

The European Patent Convention (EPC)

If the applicant wishes to extend the protection of his invention to a certain number of European states, he can file an application for a patent granted under the European Patent Convention (EPC). The EPC makes it possible to obtain, through a single, centralized granting procedure, a patent which is valid in the contracting States of his choice: the European patent.

Nearly 40 States, among them all the members of the European Union, are part of the European patent system.

The European Patent Office is responsible for the European patent granting procedure. This procedure includes a prior art search, followed by an examination of patentability. It results in the grant of a European patent for those member States which the applicant has designated. In some contracting States for which it is granted, the European patent, filed in German, English or French, must be validated by filing a translation into a national language, before granting the same protection as a national patent.

The European Patent Convention also provides for a centralized opposition procedure, in which a third party can, in the nine months following grant, contest the validity of the European patent. After expiration of the opposition period, the nullity of the European patent must be cited in the countries for which it was granted.

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WHO CAN HELP THE APPLICANT?



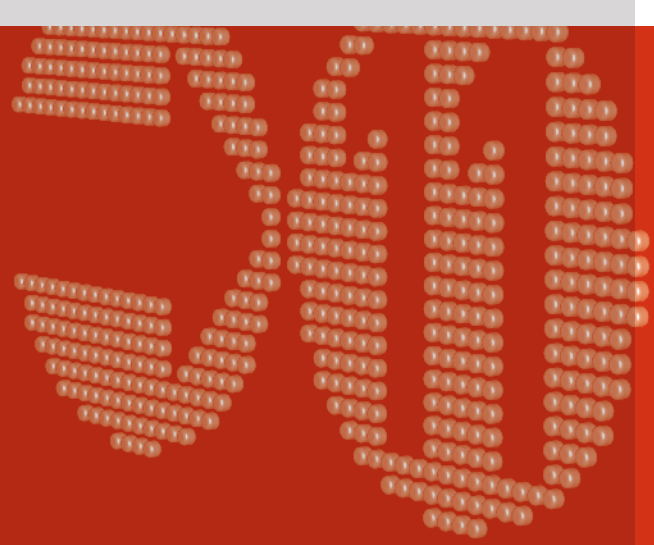
A clumsily drafted patent application can be fatal for the validity of the patent or its exploitation. By missing a deadline, the applicant can also permanently lose rights.

An informed applicant therefore enlists the support of a specialist: a patent attorney (Conseil en Propriété Industrielle), who has professional qualifications combining the technical and legal knowledge necessary to advise his clients on patent matters. He drafts the patent application based on information received from the inventor and then handles all of the formalities related to the Luxembourg patent application as well as parallel applications in other countries. He also advises his clients regarding their overall industrial property strategy.

The Ministère de l'Economie, Office de la propriété intellectuelle, maintains a register of patent attorneys who are established in Luxembourg. Patent attorneys authorized to act before the European Patent Office use the title of "European Patent Attorney".

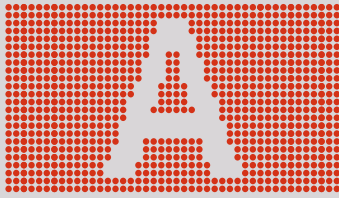
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WHAT BUDGET IS REQUIRED FOR PATENT PROTECTION?



To have a Luxembourg patent application drafted and filed by a patent attorney, you must normally anticipate a budget from 1,500 EUR to 2,500 EUR. This first filing allows you – thanks to the priority right – to reserve your potential rights over the invention for twelve months in almost every country in the world. If you also request the establishment of a search report during filing, which is strongly recommended, you must plan for an additional budget for the search fee. If, toward the end of the priority year, patent protection is still of interest, then it is most often recommended to file a PCT application before expiration of the priority year. For this type of PCT application, you must provide for a budget between 6,000 EUR and 7,000 EUR. This allows you to delay the national filings in the countries where protection is sought for thirty months from the priority date, without losing the right of priority.

In summary, with a budget in the vicinity of 10,000 EUR, you can reserve rights over your invention in more than 140 countries for thirty months. During this period you should establish an exploitation strategy for your invention and then evaluate, together with your patent attorney, in which countries patent protection may be profitable.



Abstract

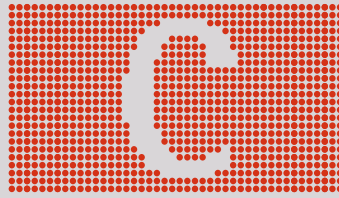
The abstract is a part of the patent application. It is a concise summary (150 words maximum) of what is described in the description, claims and drawings of the application. The abstract is used solely for technical information purposes and is not taken into consideration to assess the scope of the requested protection.

Annual fees

Annual fees must be paid in order to maintain a patent application or a patent in force from the third year from the filing. They are due on the last day of the month of the anniversary date of the filing of the patent application and are to be paid in advance for the coming year. Their amount increases with the age of the patent.

Authorized attorney

An authorized attorney is an industrial property attorney who is authorized to represent a third party in patent matters before the Ministère de l'Economie, Office de la propriété intellectuelle. This attorney has professional qualifications combining the technical and legal knowledge necessary to advise his clients, in particular in patent matters. Authorized attorneys by the European Patent Office use the title of "European Patent Attorney".



Claims

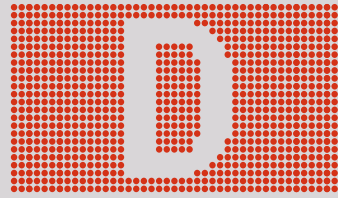
The claims constitute a technical part of the patent application. They define the product or the method which is the object of the protection granted by the patent.

We distinguish between main claims (or independent claims), which provide the most general definition of the claimed product or method, and subsequent claims (or dependent claims), which complete the definition provided by a main claim by contributing additional details to it.

If a product or method of a competitor falls under the definition provided by a main claim of the patent, then it falls under the exploitation monopoly granted by the patent. If the object defined by the claims of a patent is a method, then the rights granted by this patent extend to the products obtained directly by this method. The description and the drawings are used to interpret the claims.

Community patent

The community patent is a planned intellectual property title which is under discussion within the European Union. It will be granted according to the European patent procedure but, in addition to this, its effects will be uniform in the entire European Union and it will have a centralized jurisdictional system.



Description

The description is part of the patent application. It must:

- ➔ specify the technical field to which the invention relates;
- ➔ state the relevant prior art known by the applicant;
- ➔ describe the invention, as it is characterized in the claims;
- ➔ briefly describe the figures of the drawings (if there are any);
- ➔ provide a detailed indication of at least one embodiment of the invention in reference to the drawings, if there are any.

Document search

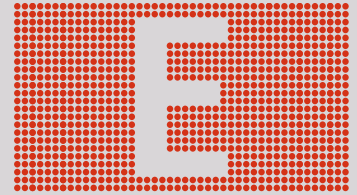
Search done in the search documentation of a Patent Office (e. g. the European Patent Office) in order to produce a list of documents of the prior art which may be relevant regarding the assessment of the novelty and inventive step of the invention claimed in a patent application. Since 2007, the search report done by the European Patent Office is accompanied by a written opinion on the patentability of the invention.

Document search for a Luxembourg patent application

An applicant for a Luxembourg patent must, under penalty of having a patent with a maximum duration limited to six years, present, within eighteen months from the filing date of his application (or from the priority date, respectively, if a priority is claimed):

- ➔ either a request for the establishment of a search report;
- ➔ or a request for the validation of a search report established for a parallel application.

Only a search report established by the European Patent Office can be validated.



Exploitation monopoly

The patent grants the right to prohibit all third parties from:

- ➔ manufacturing, offering, putting on the market or using, or importing or possessing for the aforementioned purposes, the product covered by the patent;
- ➔ using a method covered by the patent as well as offering its use in the territory of Luxembourg;
- ➔ offering, putting on the market or using, or importing or possessing for the aforementioned purposes, the product obtained directly by the method covered by the patent.
- ➔ The patent also grants the right to prohibit all third parties from any contribution to an unauthorized exploitation of the patented invention.

European patent

The European patent is a patent granted in light of the European Patent Convention by the European Patent Office for the contracting States designated by the applicant. In each of these States, the European patent in principle has the same effects and is subject to the same system as a national patent.

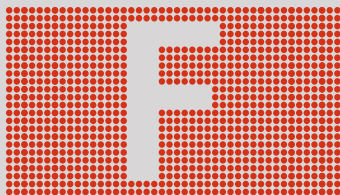
European patent application

A European patent application can be filed with the European Patent Office or with the Ministère de l'Economie, Office de la propriété intellectuelle.

European Patent Convention (EPC)

The EPC establishes a common law for the contracting States regarding patent grant. It establishes the European Patent Office, a central organization responsible for granting European patents for the contracting States.

Nearly 40 States, among them all the members of the European Union, have joined the EPC.



Filing date

The filing date of a Luxembourg patent application is the date on which the applicant filed, with the Ministère de l'Economie, Office de la propriété intellectuelle, the documents containing:

- ➔ information according to which a patent is requested;
- ➔ information allowing identification of the applicant;
- ➔ a description and one or several claims written in French, German, English or Luxembourgish.

First filing

The filing of a first patent application for an invention is called "first filing". This application grants a priority right, which can be claimed upon filing of later applications during the twelve months following the first filing.

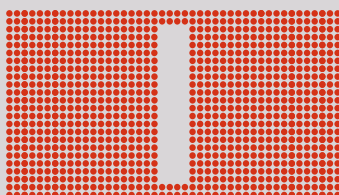
Foreign filings

A patent only grants rights in the country for which it was granted. It is therefore necessary to file patent applications for the invention in or for, respectively, all countries in which one wishes to obtain a monopoly. Right of priority, PCT application and European patent application are tools designed to facilitate this process.



Grant of a Luxembourg patent

The grant of a Luxembourg patent is done without prior examination of the patentability of the claimed invention. If the applicant has duly completed the requirements concerning a document search, the Luxembourg patent will then have a maximum duration of twenty years. Otherwise, the maximum duration of the patent will be limited to six years. An unfavorable search report cannot prevent the grant of a Luxembourg patent. It is for the court to which an infringement suit or a suit for nullity of the patent is submitted to examine whether the claimed invention meets the patentability criteria.



Industrial application

Industrial application is a patentability criterion. An invention is considered susceptible of industrial application if its object can be manufactured or used in any type of industry, including agriculture.

Industrial property

Industrial property is made up in particular of patents, registered designs, trademarks for goods and services, as well as manufacturing secrets.

Infringement of a patent

Infringement of a patent exists when a third party does not respect the exploitation monopoly granted by the patent.

Intellectual property

Intellectual property includes all elements of industrial property, as well as copyrights.

Invention

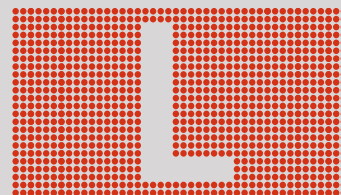
The legislator provides a definition of an invention by exclusion, specifying what is not considered an invention, in particular:

- ➔ discoveries and scientific theories and mathematical methods;
- ➔ aesthetic creations;
- ➔ schemes, rules and methods in the performance of mental acts, in the domain of gaming or business activities, as well as computer programs;
- ➔ presentations of information.

It is, however, specified that these elements are not excluded from patentability inasmuch as they are claimed as such.

Inventive step

Inventive step is a patentability criterion. If, for a person skilled in the art, an invention follows obviously from the prior art accessible to the public on its filing date or its priority date, respectively, then this invention does not involve an inventive step.

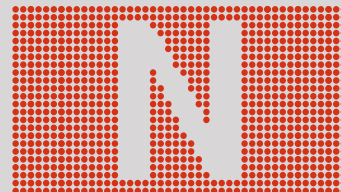


Luxembourg patent

The Luxembourg patent is a patent which covers the territory of the Grand-Duchy of Luxembourg and which is granted by the Minister of the Economy based on Luxembourg patent law. In Luxembourg, an invention can then be protected either by a Luxembourg patent, or by a European patent designating Luxembourg.

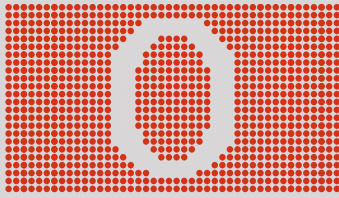
Luxembourg patent application

A Luxembourg patent application is a patent application filed with the Ministère de l'Economie, Office de la propriété intellectuelle, in order to obtain a Luxembourg patent (see also filing date).



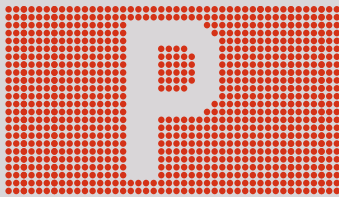
Novelty

If an invention has already been made available to the public before the filing date of the patent application, then it is not novel. An invention claimed in a Luxembourg patent is also not novel if this invention has been described in a patent application effective in Luxembourg, which is not published until after the filing date of the patent, but which has a filing or priority date prior to the filing date of the Luxembourg patent.



Office de la propriété intellectuelle

A department of the Ministère de l'Economie of the Grand-Duchy of Luxembourg which is, among other things, responsible for all formalities related to filing patent applications, the patent grant procedure and maintaining patents in force.



Patent

The patent is an industrial property title which grants its holder or the assignees of its holder an exclusive exploitation right for an invention under the terms set by the law. The monopoly granted by the patent is limited to the territory of the State for which the patent is granted and has a maximum duration of 20 years. Its maintenance in force requires the payment of annual fees.

Patent application

A patent application must contain:

- a request for grant of a patent;
- a description of the invention;
- one or several claims;
- the drawings to which the description or claims refer;
- an abstract.

The description, claims, drawings and abstract constitute the technical parts of the application.

Patent licence

The patent licence is a contract between the patent holder and a third party (the licensee) in which the patent holder authorizes the licensee to exploit the patented invention. The patent holder can guarantee the licensee exclusive exploitation of the invention. In this case, an exclusive licence is granted. The patent holder can, however, also authorize the licensee to exploit the invention, while reserving the right to exploit the invention himself and/or to grant similar rights to other licensees. In this case, a non-exclusive licence is granted.

Patentability criteria

In order to be patentable, an invention must:

- be novel;
- involve an inventive step; and
- be open to industrial application.

PCT application

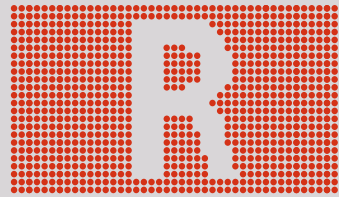
A PCT application (or international application) is a patent application done under the Patent Cooperation Treaty. It allows the applicant to reserve, in all PCT member countries, rights over the invention until the end of the 30th month from the priority date of the international application. The applicant of the same international application receives a search report and a report on the patentability of his invention. More than 100 countries are currently members of the PCT.

Priority date

The priority date is the filing date of the first patent application done for an invention. For a later patent application which enjoys the right of priority of the first filing, the priority date replaces the actual filing date regarding the prior art to be taken into consideration in order to assess whether the invention is novel and involves an inventive step.

Priority right

A person who has filed a first patent application for an invention in a signatory State of a convention on the right of priority enjoys, for a period of twelve months after the filing date of the first application, a right of priority to perform, for the same invention, the filing of a later patent application in all of the States having signed this convention (see also priority date). A convention on recognition of the right of priority currently binds almost all States.

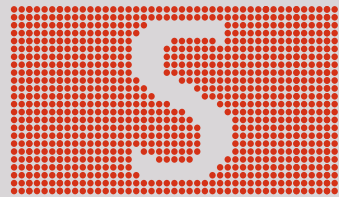


Request for grant

The request for grant is part of the patent application. It must be presented (in triplicate) on a form provided by the Ministère de l'Economie, Office de la propriété intellectuelle.

Royalties

Licence fees paid by the licensee to the patent holder in order to receive authorization to exploit the patented invention.

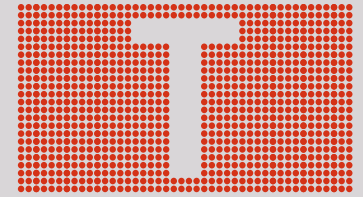


Software – patent protection

European legislation excludes software programs "as such" from patent protection. Jurisprudence has, however, allowed the patentability of software which is part of programmed machines.

State of the art accessible to the public

The state of the art accessible to the public is made up of everything which has been made accessible to the public by a written or oral description, by use or any other means, anywhere in the world.



Technological watch

Technological watch is based on the search and analysis of all technological information (in particular patents) with the aim of catching development opportunities and detecting competitive threats while providing strategic choices for business decision makers.

Ministère de l'Économie
Office de la propriété intellectuelle

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Version January 2016



APPENDICES

[Appendix 1 : Fees table in relation with patents in the Grand-Duchy of Luxembourg](#)

[Appendix 2 : Useful addresses](#)

[Appendix 3 : Excerpt from the Grand-Ducal Regulation of November 17, 1997 concerning the administrative procedures and formalities related to patents \(Memorial A n° 96 from December 17, 1997\)](#)

[Appendix 4 : Digitalisation of the exchange of correspondence concerning the Benelux patent platform \(BPP\)](#)

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