

Patent Searches

In order to get a patent, an invention has to be useful, novel and not obvious. In the US, the useful standard is pretty simple to meet: for all intents and purposes the invention has to do something. The arguments in getting a patent generally come down to novelty and obviousness.

To determine novelty and obviousness, the patent examiner will perform a “prior art” search to determine if the invention’s concept has been previously disclosed. As a part of the process, the examiner will generate references to patents and publications for closely related concepts and inventions and then use these references to argue against issuing a patent for the application.

It is always best for an applicant to have a patent search done before filing an application. Not only does the search help to determine whether it is worth filing for the patent, but by having some idea of what the examiner is going to find it is often possible to write applications around potential conflicts with prior art.

There are several companies that do patent searches and I strongly encourage inventors to use them. A proper search generally requires an understanding of the US Patent Classification System, the Cooperative Patent Classification System, knowledge of some pretty detailed search techniques and, in order to be efficient, access to expensive databases. And then, once you have cleared these obstacles and found the patents, the inventor still has to read and evaluate the patents. The truth is that even a low end patent search will give you better results than what inventors can do for themselves.

Fortunately, there appears to be a good bit of competition among patent search companies. Patent search costs are a function of the subject matter and the complexity of the invention. A patent search for a simple mechanical invention will usually cost less than \$1,000 from a high end company and will probably cost under \$500 from lesser prestigious companies. Simple chemical and electrical searches will start around \$1500 from the better firms.

Even from the best companies, patent searches are not perfect. They will miss references that the examiners will find. This is because patent examiners are very good at what they do. They are experts in their fields with a lot of experience, access to the best internal and external databases, and, as employees of the USPTO, they have the support of an institution that has been doing this sort of work for over 200 years. Applicants need to expect that examiners will find some unexpected references.

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