

## Questions of Time

It is a common dilemma. What do you do when you have an invention that you are not sure is worth protecting? There are a lot of reasons: you don't know if there is a market, things don't work exactly the way you want, or maybe you just don't understand what you have.

In the ideal world, you could apply for a patent when you are ready. In the real world US patent law sets limits on the time available to file.

The general principle is that inventors have one year to exploit their invention before they have to file a patent application. For the purpose of this blog, we look at four activities that start the clock: sale, public use, publication, and filing for a patent in another country.

**Sale:** To qualify as a sale, one merely has to offer to sell the invention. The offer does not have to be accepted. The sale does not need to be completed. The invention does not need to have been built. The invention doesn't have to work. The inventor doesn't even need to consent to the sale. The bottom line is that offering to sell the invention is all that is needed to start the clock. The explicit exception is that an offer to sell the rights to the patent does not qualify as a sale.

**Public Use:** Like sales, the threshold for public use is low. The invention has to be used in public. That's it. The public doesn't need to see it. Even if the public sees it, they don't have to recognize it as new. All that is needed start the clock is that the invention was used in a publicly accessible place. Even the term "used" is pretty loose. For example, suppose you were running a monitoring application on a smart phone. That could be considered public use even if that app never generated an alert in a public place.

**Publication:** Whether it is in a journal, a magazine article, a website, or even an advertising flyer, once inventors announce their invention, they have started the clock. The truth is that announcement is too strong a term here. The information only needs to be available to the public. It does not need to be read or even received by anybody to qualify. A website without hits or a handout with no takers is still enough to start the clock.

**Filing for a Patent in Another Country:** The rule here is simple, once a patent is filed in another country, the inventor has 12 months file a US patent.

We need a disclaimer here. While this blog can discuss general principals, the laws regarding timing are detailed, complicated and inflexible. Making matters worse, they have changed recently. If you haven't already, this is a really good point in the process to consult with a patent agent or attorney about your specific situation.

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