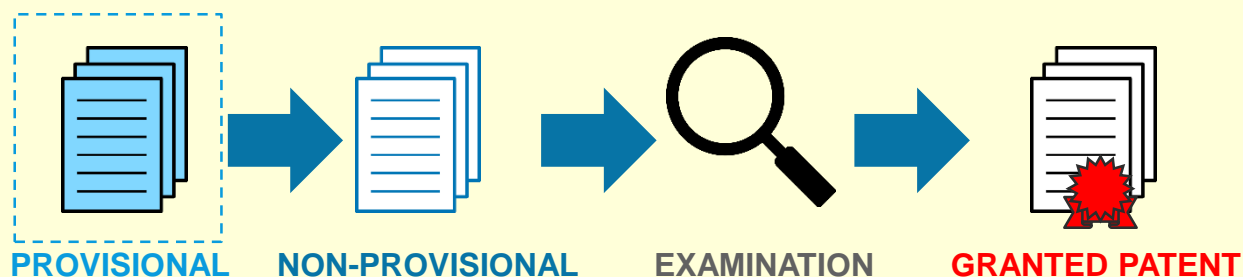


THREE GOOD REASONS TO FILE A PROVISIONAL PATENT APPLICATION



BASICS

In the United States, inventors have the option of filing a **provisional application** before filing their non-provisional application. Provisional applications are never examined, but the inventor may rely on them for providing a priority date against which prior art is assessed. A provisional application remains pending for 12 months, and within this 12-month period, the applicant must subsequently file a non-provisional patent application, claiming the benefit of the priority application. It is the non-provisional application that has the potential to mature into a granted patent.

Provisional patent applications are entirely optional, and inventors may file a non-provisional application directly. Thus, a common question that inventors ask is “Why bother? Why should I file a provisional patent application at all?” Here are **three sound reasons** to file a provisional patent application.

1

PATENT TERM: The term of a patent is 20 years from the earliest filing date, **excluding provisional applications**. Thus, while a provisional application gives the inventor a priority filing date, it does not start the patent term clock. In effect, by filing a provisional application and waiting a year to file your non-provisional, your patent term will expire 1 year later than it would have without the provisional application.



2

DELAY EXAMINATION COSTS: A lot of inventors are surprised to learn about backlogs at the USPTO. In fact, it typically takes 16 months from filing a patent application before the USPTO issues a communication on the merits (“Office Action”). This delay can actually help smaller businesses and solo inventors, because it gives them an opportunity to evaluate the marketplace for their invention, and to see whether proceeding with the examination process and its associated costs is worthwhile. Filing a provisional patent application can function to slightly **delay examination costs** until the value of the invention can be better understood.



3

PATENT PENDING: A provisional patent application has less formalities than a non-provisional application and is a quicker way to get to “**PATENT PENDING**.” For example, a provisional application requires no claims, or oath by the inventor. This requires a caveat, however. Because formality is optional, some people think that a provisional application can be hastily drafted and without attention to detail. This would be a mistake. Budget permitting, it is always best to draft a provisional application to be as complete as possible. You are only entitled to a priority date for subject matter that is disclosed in the provisional application. Thus, a poorly-written and crude provisional application may actually be harmful.

PATENT PENDING

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