

Filing a Provisional Application

Demystifying the Filing Process

UNITED STATES
PATENT AND TRADEMARK OFFICE



Notice

This content is for informational purposes only and is not legal advice. Please consult with appropriate sources for legal authority and guidance on these matters.

Objectives

- Types of Patents
- Provisional Application Overview
- Provisional Application Filing Requirements.

Types of Patents:

An Overview

- **Utility Patent**

- Utility patent: may be obtained by anyone who invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.
 - The term “composition of matter” relates to chemical compositions and may include mixtures of ingredients (chemicals) as well as new chemical compounds. Examples may include a pharmaceutical drug or shampoo.
 - An example of a machine may include a bicycle, an apparatus, or device.
 - The term “manufacture” refers to articles that are made or manufactured. Examples may include a tire or an integrated circuit.

- **Design Patent**

- Design patent: may be obtained by anyone who invents a new, original, and ornamental design for an article of manufacture.
 - A design consists of the visual ornamental characteristics embodied in, an article. The subject matter of a design patent relates to the configuration or shape of an article.

- **Plant Patent**

- Plant patent application: may be filed by anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Provisional *utility* applications

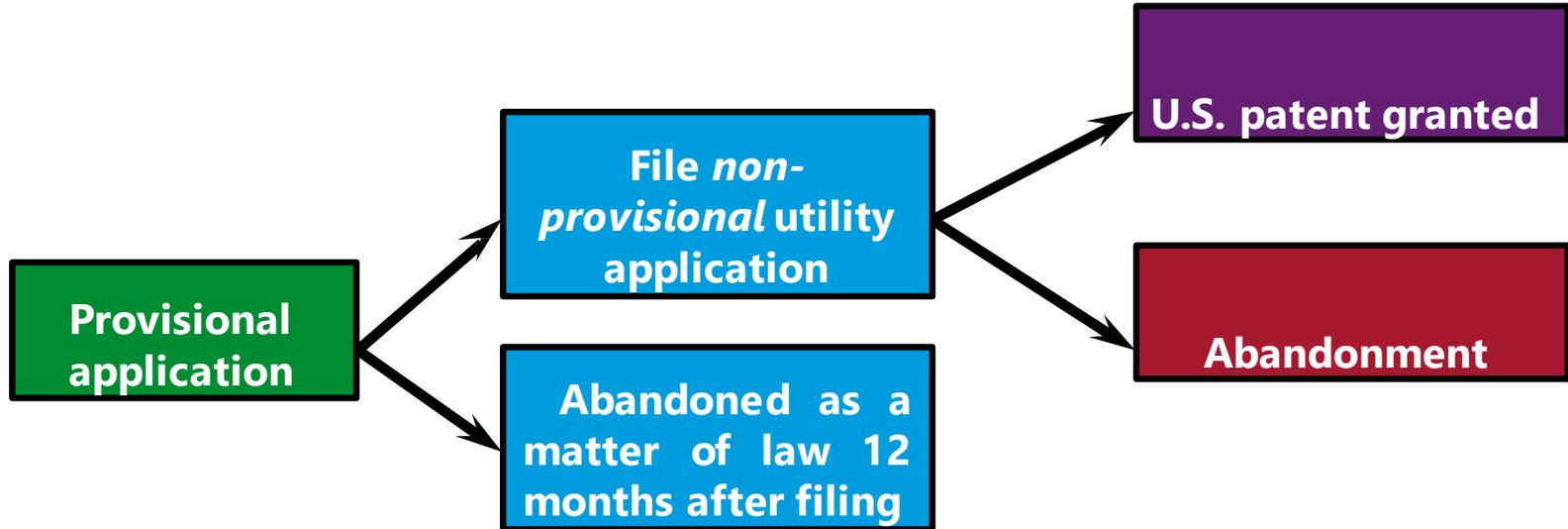
- A provisional application for patent (*provisional application*) is a U.S. national application filed in the USPTO for *utility* and *plant* inventions.
 - Design inventions are not eligible for filing provisional applications.
- *Provides* a **low-cost** way to establish an early effective filing date (priority date) with fewer formalities.
- A provisional application does NOT issue as a patent, but **only** a later-filed **non-provisional** application may issue as a patent and benefit from the provisional application filing date.
- *Provides* a 12-month window to file corresponding utility non-provisional patent application in order to benefit from the priority date of the provisional application.
- Provisional application is abandoned automatically at 12 months and is not examined.

Provisional utility applications

- Additional benefits of provisional applications:
- Patent term measured from filing date of subsequent **non-provisional** application
 - Patent term is currently 20 years from the date of filing
 - Provides up to an additional 12 months of protection on your invention based on filing of the non-provisional.
- Term **patent pending** allowed to be applied
 - Inventors may use term during time period after patent application (Provisional, Non-Provisional, Design, or Plant) has been filed, but before patent has issued



Provisional utility applications



Provisional utility applications

Filing Requirements

- Title of Invention.
- Name(s) of all Inventors.
- Inventor(s) residence(s).
- Correspondence Address.
- Attorney Information (if applicable).
- U.S. government interest (ownership) (if applicable).
- **NOTE:** The use of USPTO form PTO/SB/16 (Provisional Application for Patent Cover Sheet) is encouraged to provide the above information. A fillable form can be downloaded from here: www.uspto.gov/sites/default/files/documents/sb0016.pdf

Provisional utility applications

Filing Requirements (continued):

- A Detailed Written Description of the Invention (Specification), including:
 - Background of the Invention.
 - Summary of the Invention.
 - Drawings describing the Invention.
 - A Detailed Description of the Invention.
- Filing Fees.
- NOTE: A more detailed guidance for writing a Specification can be found in the Manual of Patenting Examining Procedures (MPEP) Section 608 (see link):
www.uspto.gov/web/offices/pac/mpep/s608.html



Provisional utility applications

Fees:

- Low-cost submission to establish filing date
 - \$140 small entity
 - \$70 micro entity
- For micro entity status, the following certifications are made:
 - Qualifies as a small entity (less than 500 employees);
 - Has not been named as an inventor on more than four previously filed patent applications;
 - Did not, in calendar year preceding the calendar year in which the applicable fee is paid, have a gross income exceeding three times median household income; and
 - Has not assigned, granted, or conveyed (and is not under obligation to do so) a license or other ownership interest in the application concerned to an entity that, in calendar year preceding the calendar year in which applicable fee is paid, had a gross income exceeding three times the median household income.
 - To obtain a Micro Entity Certification the applicant **must** fill out the “**Certification of Micro Entity Status**” form (PTO/SB/15A). The form can be downloaded from here: www.uspto.gov/sites/default/files/forms/sb0015a.pdf
 - Guidance for filling the form can be found here: www.youtube.com/watch?v=yZwOdSMSLVA&feature=youtu.be

For more information

Contact the Pro Se Assistance Center:

866-767-3848

innovationdevelopment@uspto.gov

