



Protecting Your IP During the Rapid Development of COVID-19 Tech Products

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In this unfamiliar time, innovative solutions are being rapidly developed in the technology industry to provide treatment, supplies and products in response to combat COVID-19, as well as to maintain the operation of essential businesses.

Because of these rapid developments, it may be advantageous to quickly protect your intellectual property rights by filing a provisional patent application. A provisional patent application essentially provides a one-year extension for the filing of a U.S. nonprovisional patent application, which may ultimately issue into a patent.

A provisional patent application may be filed in the U.S. to secure a filing date without all the filing requirements of a full nonprovisional patent application. For instance, a provisional patent application only requires a coversheet, a written description providing enough detail that would allow someone having ordinary skill in the same technology the ability to make and use the invention, and drawings as necessary. In doing so, a provisional patent application provides an applicant with an additional year to experiment, determine whether the invention is viable, or perfect the invention, before filing a nonprovisional application.

If an invention is still undergoing refinement, it is possible to file separate provisional patent applications in a series to capture each version of the invention as it is being refined. Because a provisional patent application is not examined, an applicant can also avoid the costs associated with prosecuting a nonprovisional application during this one-year period.

In general, a patent application for an invention should be filed at the patent office before the invention has been disclosed to the public. However, if an invention has been publicly disclosed prior to filing a patent application, you may still be able to protect your intellectual property in the U.S. Under the America Invents Act (AIA),

adopted by the U.S. in 2013, a one-year grace period is provided to allow an inventor to file a patent application within one year from the time he or she publicly discloses an invention, such as by a printed publication, public use, sale or other means.

Specifically, the AIA provides that a disclosure, which may otherwise prohibit your ability to obtain patent protection, may not prevent your obtaining patent protection if: (1) the disclosure was made one year or less before the effective filing date of the claimed invention; and (2) the disclosure was made by the inventor, a joint inventor, or another who obtained the subject matter directly or indirectly from the inventor or joint inventor. While this grace period is available in the U.S., it may not be available in some foreign countries.

Accordingly, the intellectual property rights being rapidly developed in the technology industry in response to COVID-19 may be quickly protected in the U.S., such as by filing provisional patent applications within one year of the invention being publicly disclosed.

The United States Patent and Trademark Office recently launched a web-based platform, [Patents 4 Partnerships](#), to facilitate connections between patent holders and potential licensees in key technologies related to the COVID-19 pandemic. The platform provides the public with a user-friendly, searchable repository of patents and published patent applications that are indicated as available for licensing in technologies related to the prevention, treatment, and diagnosis of COVID-19. IP owners are invited to submit technologies that they believe are related to the COVID-19 crisis. Individuals and businesses who can turn those rights into solutions for our health and wellbeing can then search and sort information on the platform in a variety of ways, including by keyword, inventor name, assignee and issue date.

If you would like to explore ways to secure patent protections for your COVID-19 innovations, please contact [Colleen Tersmette](#) or any attorney in Frost Brown Todd's [Intellectual Property](#) practice and [Technology](#) industry team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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