

Difference between US Patent and European Patent

The Korean Intellectual Property Office (KIPO), European Patent Office (EPO), Japan Patent Office (JPO), China National Intellectual Property Administration (CNIPA), and United States Patent and Trademark Office (USPTO) are the most [significant patent offices](#) around the world. They are responsible for handling about 85% of the patent applications worldwide. We must understand the fundamental differences in the patent processing of EPO and USPTO.

This article would aid inventors to be aware of their patent rights when they decide to find a market for their products in those countries.

Publicly available inventions

In some instances, the invention might become available to the public even before filing a patent application. Will the invention still be patentable?

EPO: The EPO considers an invention as publicly available if the inventor discloses the invention in any media. It also includes situations where the inventor sells the invention or discloses it to an investor without signing an NDA. Article 54 of the European Patent Convention (EPC) rejects all patent applications of a publicly available invention.

USPTO: The US patent office is somewhat liberal. It gives one-year time to apply for a patent of a publicly available novel invention. Hence, the inventor is free to disclose the invention without any fear of losing the right to the patent. However, the inventor should either make the invention public by himself or by a person who knows about the invention directly from him. If any third-party publishes it, then the invention is no longer novel. But the law stands valid only in the US. If one discloses the invention, they lose their right to patent it in Europe.

Right to the invention

There are certain instances when two individuals may file a patent application for the same invention. Let us look into how the [USPTO](#) and EPO will handle the situation.

EPO: In this scenario, in EPO, the patent filing date of the invention plays a vital role. The person who files the patent first gains ownership of the patent irrespective of who initially invented the product.

USPTO: According to the *Leahy-Smith America Invents Act* of March 2013, the US patent office also follows a similar approach to grant the patent right in this scenario. The person who files the patent first is the owner of the invention.

Patentability of the invention in terms of novelty

USPTO: In the US, for an invention to be patentable, the invention must be novel (35 US Code section 102) and non-obvious (35 US Code Section 103).

EPO: Novelty in the EPO has a particular meaning. It implies that the invention must be a non-obvious solution or product. It should solve a technical problem (i.e., a problem related to its design or working). Moreover, the invention must also include an inventive step in the solution in order to be patentable.

Ways to practice the invention

EPO: In the patent application, it merely requests a method to use the invention. The applicant doesn't need to disclose all possible best methods to implement the invention.

USPTO: In the US, the patent application requests the inventor to state the best method to practice the invention. This method ensures that the inventor does not withhold any secrets about the invention. The *Leahy-Smith America Invents Act* declares a patent invalid if the applicant does not include this detail.

Publishing patent applications

Both USPTO and EPO publish the applications 18 months from the patent filing date. Publishing an application doesn't mean the granting of the patent. However, the patent offices do not publish withdrawn applications or applications with a non-publication request.

What does a granted patent mean?

USPTO: Once an inventor's patent gains approval, he owns the complete right of the invention in all USA territories. The patent owner can enjoy full patent rights and make sure that none can manufacture, market, or make use of the invention in the USA without prior approval.

EPO: However, things work differently in EPO. There are 38 member states in the EPC. Hence, the EPO treats each individual granted patent as a group of national patents. One can file all legal proceedings regarding the granted patent individually in each of the respective member states.

Claims in the patent application

EPO: The claims in EPO patent applications are always split into two parts. The first part of the claim lists some features found in the prior art (also known as the pre-characterizing portion of the claim).

It is followed by the phrases "*characterized in that*" or "*with an improvement comprising*." The features after these phrases are that of the actual invention (also known by the term characterizing portion of the claim).

USPTO: Most of the applications in the US always go by claims with a single part only. But if the application has the claims in two parts, the pre-characterizing portion is always considered as prior art. Hence, one should be very careful while writing their claims in two parts in a US patent application.

Opposing granted patents

EPO: Any individual can file an [opposition](#) against a granted patent with appropriate evidence and valid arguments within nine months from the date of issuing the patent. Both the parties present their case before the EPO. The decision from EPO is final. However, both parties can appeal against the EPO's decision and have a chance with further oral proceedings.

USPTO: In contrast, a re-examination procedure can be requested in the USA as against opposition in EPO, the person interested can question the validity of the patent with evidence, however, he cannot take part in the proceedings. The patent holder can justify his granted patents with valid reasons against the re-examination party's evidence.

These are certain instances at which the USPTO and EPO patenting procedures vary. It is always recommended to stay fully aware of the [patent process](#) and norms where one is applying for a patent.