

Speeding the Patent Process

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Patent Rights in 30 Days

A common complaint among companies is the length of time it takes to receive a patent. There may be new, inventive products that are ready to be shipped or offered for sale. These companies may have been diligent and filed a patent application several months earlier. However, with a typical delay of two to three years to obtain a patent in the United States (and up to five years for business method patents), these companies will have no recourse for a considerable time against competitors that hit the market with infringing products a few weeks or months later. These competitors will face no serious risk of patent infringement for several years. Along with infringing sales, the competitors will gain a foothold with consumers and prevent the inventive company from obtaining the first mover advantage.

A creative method for U.S. companies to resolve or at least minimize this problem can be to file a patent application in Geneva, Switzerland. A few years ago, the U.S. Congress passed legislation that allows for an inventor to start the clock for potential damages on the date a patent application publishes, rather than the date the patent is granted. Thus, once a patent application publishes, an inventor can notify its competitors that they likely are liable for damages from the date of the notice forward. The inventor need not wait until the patent is granted to begin building damages.

While publication provides for earlier patent rights, standard publication times are too long for many companies. In the United States, most patent applications publish in approximately 18 months. For a hot invention, this is too long. To further speed the acquisition of patent rights, a “follow-up and follow-up again” strategy with the U.S. Patent Office can be used. A Request for Early Publication can be filed. However, this request

should be followed up with oral inquiries to the Patent Office to request that the application be published as soon as possible and to see if all of the papers are in order or if the Patent Office would like additional information. These inquiries should be made at each step along the publication process.

A clear understanding of the operation of the Patent Office is critical to speed publication of a patent. For example, filing a Petition to Make Special may speed the substantive prosecution of a patent. However, such a petition will dramatically slow the publication process. Moreover, an understanding of the various offices that an application passes through on its way to publication is important when attempting to follow up with each office on each step of the application process. Using the follow-up and follow-up-again strategy, patent applications filed in the United States can be published in as little as four to six months.

Four to six months, however, can be too long for certain inventions; an example is a company whose competition became aware of the company's new product and was preparing a major shipment of infringing products in six weeks. Unless the company could obtain publication within less than six weeks, the competition's entire shipment would be subject to no damages. This is where filing in Switzerland comes in.

The United States is one of more than 100 nations that have signed the Patent Cooperation Treaty (PCT). Through the PCT, a company in any signatory nation can file a single application and receive priority for that application in all signatory countries.

As part of the U.S. harmonization efforts, a PCT patent application that is published by any accepted PCT authority is provided the benefit of early damages. Thus, the publication of a patent application that was ►

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Candy: The Sweet History by Beth Kimmerle	\$40.00
Chocolate, Cocoa and Confectionery by Bernard W. Minifie	\$210.00
Chocolate & Cocoa: Health and Nutrition edited by I. Knight	\$140.00
Chocolate Fantasy by Franz Ziegler	\$90.00
Chocolate Production and Use by L. Russell Cook, revised by Dr. Eppo Meursing	\$75.00
Chocolate: The Sweet History by Beth Kimmerle	\$40.00
Choice Confections by Walter Richmond . .	\$75.00
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PATENTS & TRADEMARKS

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(continued)

filed in Geneva, Switzerland, is just as powerful in obtaining prepatent grant rights as the publication of an application filed in Washington, DC, USA.

The International Bureau of the World Intellectual Property Organization located in Geneva, Switzerland, is particularly adept at publishing patent applications quickly. Especially if the Swiss Office is made aware of the importance of early publication, they generally will act quickly to pass an application to publication. In addition, understanding small cultural differences between various international patent offices will further speed publication. For example, the Swiss Receiving Office is particularly fond of electronic communication.

Adopting a follow-up and follow-up-again strategy in Switzerland, patent applications have been published in less than 30 days. In the example above, the company was able to obtain their patent publication prior to the competition's shipment and was able to subject the entire shipment to potential damages due to patent infringement.

Competition seems to be stronger every day. Maintaining a strong intellectual property portfolio is one way for a corporation to maintain an advantage over its competitors. Finding a way to obtain patent rights in less than 30 days may give the corporation the additional edge it needs to succeed in the market. Thinking "outside the box" of the United States can assist in obtaining patent rights quickly. Thus, the next time you consider the need for prompt patent rights and the common complaint that the patent process takes too long, consider filing an application in Switzerland.

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