

Provisional Application for a Patent

Since June 8, 1995, the USPTO has offered inventors the option of filing a provisional application for patent which was designed to provide a lower cost first patent filing in the United States and to give U.S. applicants parity with foreign applicants. Claims and oath or declaration are NOT required for a provisional application. Provisional application provides the means to establish an early effective filing date in a patent application and permits the term “Patent Pending” to be applied in connection with the invention. Provisional applications may not be filed for design inventions.

The filing date of a provisional application is the date on which a written description of the invention, and drawings if necessary, are received in the USPTO. To be complete, a provisional application must also include the filing fee, and a cover sheet specifying that the application is a provisional application for patent. The applicant would then have up to 12 months to file a non-provisional application for patent as described above. The claimed subject matter in the later filed non-provisional application is entitled to the benefit of the filing date of the provisional application if it has support in the provisional application. If a provisional application is not filed in English, and a non-provisional application is filed claiming benefit to the provisional application, a translation of the provisional application will be required.

Provisional applications are NOT examined on their merits. A provisional application will become abandoned by the operation of law 12 months from its filing date. The 12-month pendency for a provisional application is not counted toward the 20-year term of a patent granted on a subsequently filed non-provisional application which claims benefit of the filing date of the provisional application.

A surcharge is required for filing the basic filing fee or the cover sheet on a date later than the filing of the provisional application.