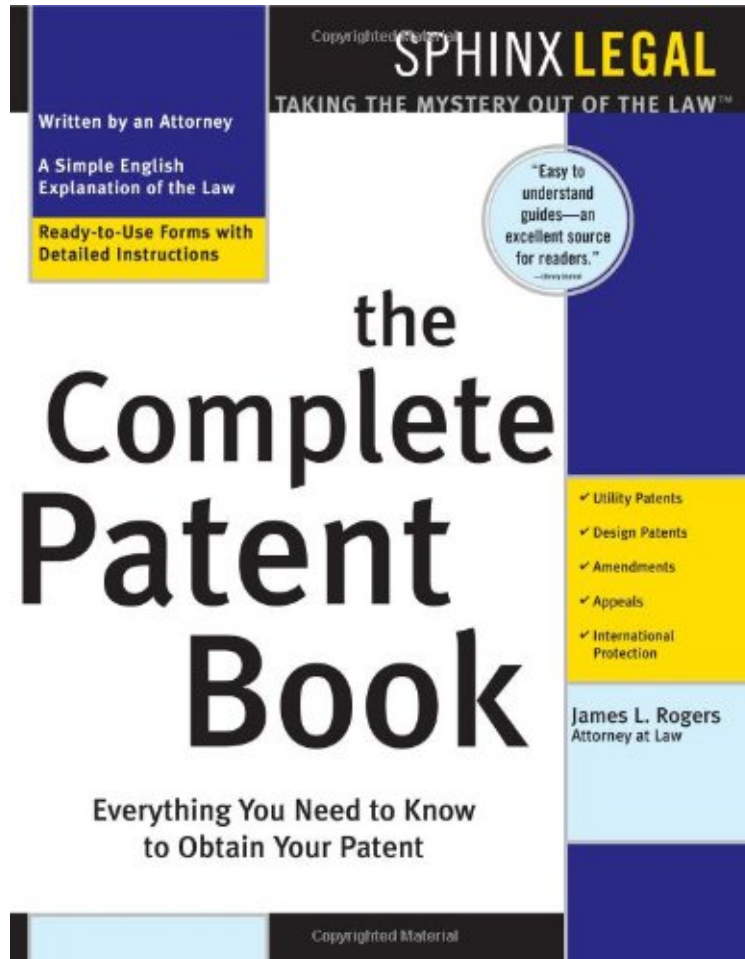


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The Complete Patent Kit: What Every Inventor Needs to Know (Complete Patent Kit (W/CD))

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About the Author James L. Rogers received his law degree from Suffolk University Law School. He received an MS degree from New York University with an emphasis on DNA recombinant technology. He is a member of the New York and Massachusetts bars, as well as admitted to practice before the United States Patent and Trademark Office. He has been a university instructor on the subject of patents and has written extensively on a wide range of legal subjects. He has authored or coauthored several books including The Complete Patent Book, Protect Your Patent, and Profit from Intellectual Property. He currently resides in Tampa, Florida. Excerpt. Reprinted by permission. All rights reserved. Six Requirements for Obtaining a Patent Excerpted from Complete Patent Kit by James L. Rogers 2005 This chapter introduces the most important statutory requirements that can bar you from obtaining a patent on your invention. These requirements are absolutely vital for you to understand and may also be somewhat foreign to you at this point in time. The requirements are: ? novelty; ? obviousness; ? written description requirement; ? enablement; ? best mode; and, ? utility. As you read through this chapter, remember this: your goal is not just to write a patent application and obtain a patent. Instead, your goal is to obtain a high-quality patent for your invention. A high-quality patent is one that gives you the broadest protection for your invention and can withstand invalidity attacks from your competitors. The patentability requirements that you will learn about in this chapter are not only necessary from the standpoint of obtaining your patent, but can be used later to attack the validity of any patent that you obtain. These requirements are very important and are referred to throughout the book. Novelty As the name suggests, novelty has to do with whether your invention is new. If your invention is an old concept, then it makes sense that the government will not give you an exclusive monopoly in the form of a patent. Patents are granted to inventors in return for the exchange of new information that can advance the technological body of knowledge in this country. The government is not interested in giving away patents in exchange for information that is already known. You can think of novelty as requiring that your invention must not have been known before. However, patent law is much more specific about what this term means. You will be at an advantage if you can start thinking about this in terms of patent law. Under patent law, novelty requires that there is no prior art that anticipates your invention. Prior art is discussed in the next section. You can also find a detailed discussion on each of the prior art sections in Chapter 13. For now, you can limit your understanding about prior art to what is contained in the next section. But if you get a rejection of your patent application on the basis of one of the prior art sections, you will appreciate the more detailed discussion in Chapter 13 (as well as the tips contained there for overcoming such rejections). If during your search you uncover prior art related to your invention, the next question to ask is, Does this prior art anticipate your invention? If the prior art that you uncover does anticipate your invention, your invention is not novel. If the prior art does not anticipate your invention, your invention will be patentable, so long as your invention is not obvious with respect to this prior art. (The meaning of obviousness is explained later in this chapter.) Prior Art Prior art can include printed material, like patents and publications, or it can include things like public knowledge and use or sale of your invention. Prior art can be a patent or publication that discusses an invention similar or related to yours. It can also be general public knowledge, public

use, or public sale of such an invention. Patents A U.S. or foreign patent is prior art if it is: ? issued before your date of invention or ? issued more than one year before your U.S. filing date. A U.S. patent issued to another is also prior art if its U.S. filing date precedes your date of invention, even if it does not issue until after the filing date (or patent issue date) of your claims under examination. Publications A printed U.S. or foreign publication is prior art if it is: ? published before your date of invention or ? published more than a year before the filing date of your application. A U.S. published patent application is also prior art if its U.S. filing date precedes your date of invention. The PTO takes the position that Internet materials are printed, so long as they include publication dates. (MPEP 2128.)

Public Knowledge, Use, or Sale of Your Invention Any knowledge or use of your invention by others in the U.S. before your invention date constitutes prior art. Any public use or sale of your invention more than one year before the date of your patent application also constitutes prior art. (Chapter 4 fully explains how to search for prior art.)

Anticipation As stated, the only time that prior art may bar your invention from being patented is when anticipation is directly related to how you draft your claims. Lack of novelty is when such prior art anticipates your invention. You define your invention in the claims sections of your patent application. You will learn how to define your invention by writing claims in Chapter 6. For now, all you really need to know is that each of your claims sets the boundaries of your invention. For example, if your invention is a table, you might have one claim that claims the table with legs and a top. In such a case, you are claiming a table made up of legs and a top. The legs and top are said to be elements or limitations of your claim, because they are the features that you list in your claim. If you were to have a second claim to the table having legs, a top, and an enamel surface, then this claim would have an additional limitation—the enamel surface. You look at claims individually for anticipation purposes. A claim is anticipated only if each and every element as set forth in your claim is found, either expressly or inherently, in a prior art reference. In other words, anticipation requires that a piece of prior art (a patent, publication, sale, or use) discloses each and every limitation of your claimed invention. The invention described by the prior art must be shown in as complete detail as is contained in your claim. Although the elements must be arranged as required by your claim, identical terminology is not required. (MPEP 2131.) It is permissible for your examiner to find that a prior art reference inherently discloses an element of your claim, even though the disclosure does not come right out and explicitly state the element. To do this, your examiner must provide a basis in fact or technical reasoning to reasonably support his or her decision.

Obviousness In addition to a lack of novelty, a claimed invention is unpatentable if the differences between your claimed invention and the prior art are such that the subject matter as a whole would have been obvious at the time your invention was made to a person having ordinary skill in the art (a person skilled in your field). In short, the PTO can take anything that qualifies as prior art, combine it with any other prior art, and then reject your claimed invention on the basis that it is an obvious invention—even though neither one of such references alone would anticipate your invention. Obviousness is a potent tool for the examination of your application because the examiner does not have to find that each particular reference, such as one individual science report, anticipates your claim. The examiner would have to reject your invention on the basis of a lack of novelty. Instead, the examiner only needs to find that all of the references combined teach or suggest your invention. Any reference that your examiner uses as prior art, however, must be analogous to the art of your invention. A reference is considered analogous and, therefore, available for use in an obviousness rejection, if it is either: ? within the field of your endeavor or ? reasonably pertinent to the particular problem with which your invention was involved. The requirement that prior art references be analogous to the art of your own invention is a requirement unique to obviousness. It is not a requirement for the purposes of whether a single reference anticipates your invention under the concept of anticipation above. In determining whether a single reference bars your invention under anticipation, the reference may be from an entirely different field than your invention or may be directed to an entirely different problem from the one addressed by you, yet the reference will still anticipate if it explicitly or inherently discloses every limitation recited in your claims. You will learn much more about obviousness in Chapter 13. Note that not finding any one reference that does not anticipate your invention may end your inquiry for novelty, but not for obviousness purposes. Keep both novelty and obviousness in mind as you do your patent searching in Chapter 4.

Written Description Requirement The written description requirement is the first of three requirements under the first paragraph of 35 U.S.C. 112. The second and third requirements, enablement and best mode, are discussed in the next two sections. The written description requirement prevents you from claiming subject matter that was not described in your patent application as filed. In fact, it prevents you from doing anything to the claims of your patent application that are not supported by your written description in your application as you file it. The essential goal of the written description requirement is to clearly convey the subject matter that you have invented. The requirement for an adequate disclosure ensures that the public receives something in return for the exclusionary rights that are granted to you by a patent. The government will give you a patent, but in return, wants you to disclose your invention to the public. This disclosure adds to the scientific body of knowledge that will advance technology. To satisfy the written description requirement, your patent application must describe the claimed invention in sufficient detail so that one skilled in the art can reasonably conclude that you have possession of your claimed invention. This is done by describing your invention with all of its limitations using such descriptive means as words, structures, figures,

diagrams, and formulas that fully set forth y...