

Utility Models and Innovation Patents

Some countries offer an alternative to a "standard patent" that is generally called a "utility model" or an "Innovation Patent" in Australia. An invention that is suited to a utility model is typically a simple device or improvement which is practical and useful, however does not necessarily represent a significant step forward in the art, though the requirements for utility model vary from country to country. Utility models have a lower inventiveness requirement and can be obtained more quickly and cheaply so therefore are more suited to "incremental" inventions. However they have a shorter term than a standard patent and the number of claims allowed may be limited. Additionally, some subject matter may not be allowed. For example, methods, plants and animals are typically not allowed. Utility models are often not substantively examined unless requested by either the owner or a third party so that it can be enforced or deemed invalid. The below guide sets out the available countries and the term of protection.

Both patent and utility model protection is available in some countries. Some countries allow conversion between the two types but others, such as China, require an election at the time of filing. Converting a standard patent to a utility model may be useful when there are problems overcoming an inventive step objection for the standard patent. Some also allow simultaneous filing and allow for the utility model to be abandoned when the standard patent is accepted. This strategy allows for some protection to be in place at an earlier stage in the patent prosecution process, particularly useful if a competitor is releasing an infringing product.

Another advantage of utility models is that they may have different requirements around grace periods, allowing for disclosure of the invention a short time before the utility model is filed. For example, in Germany, the law for a standard patent has been harmonized with the rest of Europe, removing any grace period, however the utility models retain a 6 month grace period. The novelty requirements may also differ from that of a standard patent. For example, in Spain, to obtain a standard patent, the invention must be novel in relation to the state of the art worldwide, but for a utility model it must only be novel in relation to the state of the art accessible in Spain. These subtle differences vary by country but may lead to a useful strategy for protection in a selection of countries if there has been prior use or publication, particularly in Europe where there are typically no grace periods for standard patents.

Utility Model Countries

The following countries provide protection through Utility Models or similar systems.

Country	Maximum Term	PCT route	Conversion from standard
Argentina	10 years	No	Yes
ARIPO	8 years	Yes	Yes
Australia	8 years	Yes by division	Yes
Austria	10 years	Yes	Yes by division
Brazil	15 years	Yes	Unknown
Chile	10 years	No	Unknown
China (including Hong Kong and Macau)	10 years	Yes	No
Czech Republic	10 years	Yes	Yes by division
Denmark	10 years	Yes	Yes by division
Finland	10 years	Yes	Yes
France	6 years	No	Yes
Germany	10 years	Yes	Yes
Greece	7 years	No	Yes
Indonesia	10 years	Yes	Yes
Ireland	10 years	No	Yes
Italy	10 years	No	Yes
Japan	10 – 15 years	Yes	Yes
Korea (South)	10 years	Yes	Yes
Kuwait	7 years	No	Unknown
Malaysia	20 years	Not directly	Yes
Mexico	10 years	Yes	Yes
OAPI	8 years	Yes	Unknown

Philippines	7 years	Yes	Yes
Poland	10 years	Yes	Yes
Portugal	6-10 years	Yes	Yes
Russia	13 years	Yes	Yes
South Africa	10 years	No	No
Spain	10 years	Yes	Yes
Taiwan	10 years	No	Yes
Turkey	10 years	Yes	Yes
United Arab Emirates	10 years	Yes	Unknown
Uruguay	10 years	No	Yes
Venezuela	10 years	No	Yes
Vietnam	6 years	Yes	Yes

Other countries offering utility models include Albania, Angola, Armenia, Aruba, Azerbaijan, Belarus, Belize, Bolivia, Botswana, Bulgaria, Colombia, Costa Rica, Ecuador, Egypt, Estonia, Ethiopia, Georgia, Ghana, Guatemala, Honduras, Hungary, Kazakhstan, Kenya, Kyrgyzstan, Laos, Lesotho, Peru, Republic of Moldova, Mozambique, Nicaragua, Panama, Peru, Sierra Leone, Slovakia, Slovenia, Tajikistan, Thailand, Tonga, Trinidad & Tobago, Uganda, Ukraine and Uzbekistan.

*The above list and patent terms are subject to confirmation by local attorneys in countries of interest.

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