

What to Do When Your Patent Expires

By Robert Franks, Chartered & European Patent Attorney, May 21st, 2025,

Effect of Expiry

Patents have a maximum duration of 20 years from the date of first filing, but the protection may have effectively already been extended up to a maximum of 21 years if it claimed priority from an earlier patent application filed in the preceding year.

The good news is that you have already had 20 years during which you could charge a monopoly price for your patented product or process, but the bad news is that on expiry of the patent this monopoly comes to an end and, unless you have other patents on the same product or process, then it's a free-for-all for anyone to copy. Open market competition applies, driving down the prices that you can charge for your product or process.

What Can You Do to Extend the Patent?

In general, there is nothing which can be done to extend the patent protection for the original invention beyond 20 years. You have already had your maximum term of protection.

For a limited category of inventions, the 20-year protection can be extended by a Supplementary Protection Certificate (SPC). SPCs are granted for patented active ingredients in medicinal and plant protection products that have undergone regulatory testing and approval processes. They effectively extend the patent term to compensate for delays in obtaining marketing authorization. An SPC will not extend the term of your patent but gives similar protection after expiry. It protects the specific pharmaceutical or plant protection product authorised, and any use of the active ingredient in an authorised pharmaceutical or plant protection product whilst the SPC is in force, and which is protected by the patent.

It enters into force when your patent expires and can last for up to 5 years. An SPC for a medicinal active ingredient may also be extended for a further six months if it has undergone the appropriate paediatric testing.

But in the main, the maximum 20-year term from the filing date of the patent applies for the majority of patents.

Reinstatement

Under some special conditions, you can sometimes reinstate a patent which has been forfeited before the end of the 20-year term, for example due to non-payment of a renewal fee. Reinstatement cannot extend a patent term beyond the normal 20-year term from the filing date.

What Else Can You Do?

Assuming that you have no other registered protection for the product or process, you can still apply to register any trade marks for your product or process. If diligence has been taken, you should already have done this, but if not, then trade marks should be registered immediately. Customers will have come to know your product by its trade mark, or by the name of your business, and may keep buying the product from you anyway due to brand loyalty, brand inertia, or resistance to change. Your brand is an identifier of the origin of your products, goods, or services. Registering your trade marks prevent others from using an identical mark to sell their competing products or services, or stops them using a similar mark where there is also a likelihood of confusion.

Innovate On from Your Original Invention and File More Patent Applications

Incremental improvements and innovation may have been taking place periodically over the last 20 years in which your patent was in force, and so ideally you would already have a pipeline of further patents and applications covering those innovations and your products would have moved on from the original invention. But if there has been stagnation of product development, perhaps because the original invention was a hard act to follow or difficult to improve on, then think now about how your product or process can be improved now. Any improvements would be patentable provided they are new and involve an inventive step over the original invention.

Copyright

Copyright does not protect ideas, so it cannot protect your invention, but it is created automatically, is unregistered, and has a long duration. There have been a few UK Court cases where copyright has been successfully enforced for products where either the creator did not originally file a patent application, or where the patent has long since expired. These cases claim that the product is a “work of artistic craftsmanship” and are therefore subject to copyright protection for a duration of the creator’s life plus 70 years after their death. It’s a long shot and some would say speculative, and depends on the type of product, but there have been successful cases brought in the

UK Courts affording copyright to things such as bicycles which you would not normally consider to be artistic works. In some cases, UK copyright claims have been filed where the copier has settled the case and ceased copying without it ever having been decided by the Court whether the product was or wasn't a "work of artistic craftsmanship" - we will never know - but the copyright was successfully enforced even if the Claimant was not entitled to any copyright.

Use Of Patent Number Or "Patented" Marking

You should cease to apply the wording "Patent No." (followed by the number)" or "Patented" to your product or packaging of products or processes protected by the patent, or any advertising for those. To continue to do so after the patent has expired, in the UK at least, is an offence.

In the UK, there is an allowable period "which is reasonably sufficient to enable ... to take steps to ensure that the representation is not made (or does not continue to be made)." It is also a defence to prove that you used due diligence to prevent the commission of the offence. For any products or processes which were marked as patented when the patent was still in force, these are not offences. If the words "patented" or any other wording which implies a patent is in force on the product continues to be applied after the patent has expired, then, subject to a reasonable period to amend the product marketing or packaging, these would be offending products or processes.

The maximum UK penalty for continuing to hold out that the product or process is patented once the patent has expired is a fine on level 3 of the standards scale (currently a maximum of £1,000).

Collect Any Damages Due

Damages in respect of past infringements up to the date of expiry of your patent can still be claimed after your patent has expired.

Sometimes competitors are waiting in the wings watching your patent and waiting for it to expire. Once it has expired, they can copy your invention freely. But some competitors jump the gun and release products in the last few months or final year of a patent. Anything which falls within the scope of your patent claim and which is manufactured or imported right up until the date of expiry is still an infringing product and you can still enforce the patent to claim damages for infringements up to the date when the patent expired, provided (for a UK patent) you file your claim at the Court within six years of the date when the infringements occurred.

FRANKS & CO

European Patent & Trade Mark Attorneys

For more information, please contact a Franks & Co IP Professional

Abdulmalik Lawal abdulmalik.lawal@franksco.com

Abigail Welford abigail.welford@franksco.com

Haroon Khan haroon.khan@franksco.com

Jon Banford jon.banford@franksco.com

Luke Franks luke.franks@franksco.com

Robert Franks robert.franks@franksco.com

Sheffield Office

Franks & Co

15 Jessops Riverside

Brightside Lane

Sheffield

S9 2RX

United Kingdom

t: +44 (0)114 249 9888

f: +44 (0)114 249 9666

e: franksco@franksco.com

Northampton Office

Franks & Co

Carlton House

26 Billing Road

Northampton

NN1 5AT

United Kingdom

t: +44 (0)160 463 2436

f: +44 (0)160 462 6128

e: northampton@franksco.com

Manchester Office

Franks & Co (Mancunium) Limited

Cheadle Place, Cheadle Point

Stockport Road, Cheadle

Manchester

SK8 2JX

United Kingdom

t: +44 (0)161 820 2891

f: +44 (0)114 249 9666

e: manchester@franksco.com

European Office

Franks & Co Europe BV

Jos Ratinckxstraat 5-7 bus 52,

2600 Antwerp,

Belgium

e: antwerp@franksco.eu

www.franksco.com