

PATENT EXPIRY

Tim Pearson
Pearsonpatents.com



pearsonpatents.com

FACTORS AFFECTING EXPIRY DATE

For Most Patents

- GATT
- Priority Date
 - Continuations and Divisionals
 - History of Provisional Filings
 - Foreign Priority
- Disclaimers
- Term Adjustment
- Maintenance Fees
- Interference
- Hatch Waxman



GATT

- Patent term from June 8, 1995 measured 20 years from filing date.
- Before that date can use 17 years from issue or 20 years from filing.



CONTINUATIONS, DIVISIONALS And Other Priorities

- 20 Years from the filing date of the original application from which the continuation or divisional derives.
- 20 years from the filing date even if a priority to a provisional application is claimed. (i.e. Up to 21 years from priority date.)
- 20 years from the date of foreign priority.



TERMINAL DISCLAIMERS

- Normally caused by “double patenting” of one invention.
- Patent will have the term of the original filing.
- Reference patent has to be uncovered from search of related applications.



Maintenance Fees

- Need to be paid at specified intervals, with 6 months grace period.
- Payments can be delayed for longer with cause.
- Patent can be reinstated after expiry due to non payment.



PATENT TERM ADJUSTMENT

- Due to excessive prosecution time at USPTO.
- Three years at the USPTO considered par.
- Extension time stated on face of patent.



INTERFERENCE AND OTHER CHALLENGES

- Possible effect if a patent issues but somebody files for interference or reexamination (and wins).
- (Interference = somebody has same invention but can prove earlier invention date.)
- (Reexamination = somebody can show prior art for an allowed patent.)



HATCH WAXMAN ACT

- Extends the term of a patent which claims a product, a method of using a product, or a method of manufacturing a product if specified conditions are met.
- Limits, with specified exceptions, the term of the extension to the time equal to the regulatory review period for the approved product.
- See <http://thomas.loc.gov/cgi-bin/bdquery/z?d098:SN01538:|TOM:/bss/d098query.html> for a summary.
- <http://www.oblon.com/Pub/display.php?hatchwax.html> For the Oblon Spivak review of the act.



USE OF TECHNOLOGY TO EXTEND COMMERCIAL LIFETIME

- For example – if a product patent is expiring, look for new method patents with common assignees, inventors or references.
- Method patents can be new syntheses or applications of a product.
- Look for similar product patents with rephrased claim limitations.



SUMMARY STATEMENTS

- If a patent has not been the victim of challenges or a decision to abandon, you can count on it being valid for 20 years from when the application was filed, or 20 years from the earliest priority date claimed, unless that date is a provisional application.
- Cross check the front page references, though, for other factors that may extend.

