



Netherlands Enterprise Agency

Patenting your idea

Commissioned by the ministry of Economic Affairs

*>> Sustainable. Agricultural. Innovative.
International.*

You have come up with a new idea and can't wait to develop it further. But it's a complicated process. For a start, you want to be sure that other people do not copy your idea. A patent can offer you the protection you need. It gives you the exclusive right to market your patented invention commercially.

What is a patent?

A patent is a right of prohibition. It allows you to prohibit other people from using your invention commercially in a specific area of legal jurisdiction for a specific period of time. With a patent, you will have the exclusive right to use your invention.

In order to be eligible for the protection offered by a patent, you must have come up with a technical invention which meets three specific requirements:

- **Novelty (newness)** before you submit your patent application, your idea, product or process must not be known publicly anywhere in the world, even as a result of your own actions (for example in a company brochure or a trade fair presentation).
- **Inventive step (non-obviousness)** your idea must not appear obvious to a professional in the field.
- **Industrial applicability** your idea must relate to a product or production process whose function can be technically demonstrated.

It is therefore crucial that your invention remains secret until you apply for a patent. It is also important that you carry out research in the patent databases and conduct market research at an early stage. This will help you find out if your invention is new and whether there is a market for it.

The Netherlands Patent Office: a department of the Netherlands Enterprise Agency is the patent issuing authority within the Netherlands. We will be happy to answer all your questions about patents. Our services are designed to help businesses (including start-ups), knowledge institutes and the government.

You can turn to us if you:

- have an idea for a new product and would like to know what patent information is already available in the patent databases;
- would like to know what this patent information means and how best to use it;
- would like more information on how best to protect your invention;
- would like to file a patent application.

Innovation process

For an inventor, the innovation process generally involves four phases. It begins with a good idea. When you have developed the idea, you can consider applying for a patent. During this phase, it is important to consider whether you will be able to recover the costs of your investment. The next phase is to market your product. Finally, you can decide whether to sell or license your patent. This brochure provides full details about the four phases in the innovation process and explains the support that the Netherlands Patent Office: a department of the Netherlands Enterprise Agency can offer you.



Phase 1 Do you have a good idea?

Find inspiration in the patent databases

Every invention starts with a good idea for a problem that you would like to solve. Before you start to develop the idea and apply for a patent, it is useful to take a careful look at the relevant patent information. If your idea already exists, you will not be able to protect it with a patent. You may also run the risk of infringing the patent on someone else's idea.

Patent databases

You can find the patent information in the patent databases, which include records of approximately sixty million patent publications. The descriptions of the patented inventions include a clear indication of how they work. This can be a useful source of inspiration since it gives you an idea of the technical knowledge already available, potentially saving you a lot of energy, time and even money. There is also an added advantage: it enables you to see what your competitors are doing and who you might potentially be able to work with.

Workshops

We provide assistance in searching. You can learn how to search the databases by attending one of our workshops in your region. Although searching the patent databases is actually quite easy, you will certainly benefit from a little assistance. It is no easy matter finding the right information among the huge numbers of patents. And when you've found the relevant information, we will be happy to explain what exactly this could mean for you.

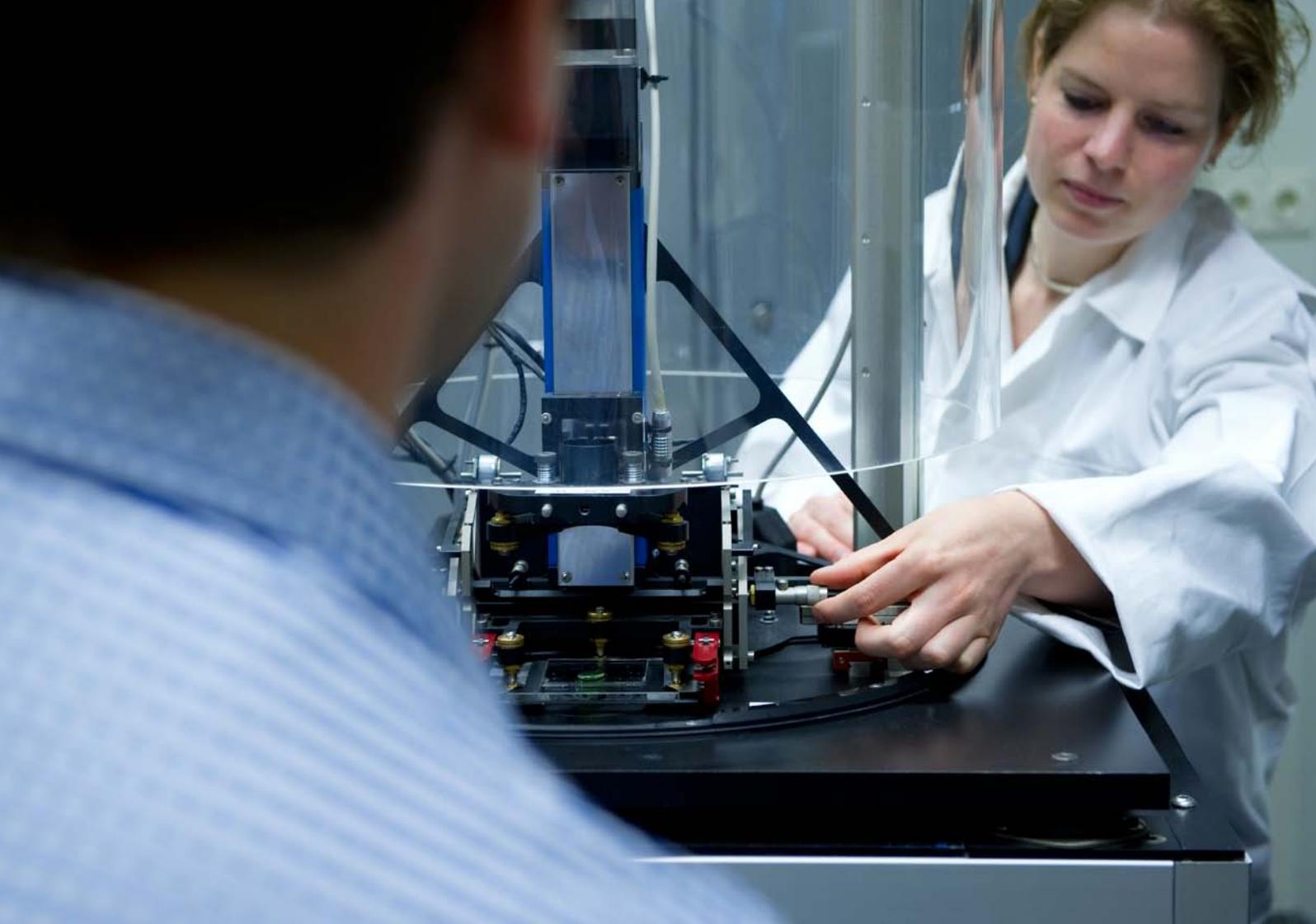
Where can you find the patent databases?

It is possible to access the patent databases from the comfort of your own home. Via the link: www.rvo.nl/patentinformation you have access to:

- **Esp@cenet** This is a collection of patent publications (more than eighty million) from dozens of different countries. These patents can provide you with inspiration for your own idea. You can also use the patents that have expired or are no longer maintained in the Netherlands.
- **Patent register** It is not only important to know which patents already exist (via esp@cenet), but also if they still have rights attached to them. You can check this in the patent registers for the different countries. The Dutch patent register includes information on the status of all published patent applications, patent rights and certificates valid in the Netherlands since 1912. You can see which patents have been awarded and whether they are still in force. The patent register is updated on a daily basis.
- **Epoline®** This is the patent register of the European Patent Office. It provides information about the status of all published European and international patent applications.

However you decide to conduct your patent research, you must make sure that you are thorough and do not make your invention public.

Novelty, or newness, is one of the key factors that will determine whether your invention can be protected. We therefore recommend that you consult other sources in addition to the patent databases to find out whether your idea is new. For example, you can consult the internet (Google), family and friends, shops, trade fairs, trade magazines and literature, local newspapers and the free press. Whatever approach you adopt, you must make sure that you are thorough and that you do not make your invention public. You should not be too quick to conclude that your idea does not already exist. If you cannot find your idea anywhere else, it could be new. You can then decide to develop it further.



Phase 2 Testing and protecting your idea:

make a prototype and consider the options of a patent

Once you know that your idea is original and how you would like to develop it, you can move onto the next phase. You should start with a prototype. A prototype makes your invention tangible and allows you to demonstrate it effectively. It also shows that your invention works and enables you to test it yourself. If you want to show your prototype to other people, you should do this under the strictest of confidentiality or wait until you have applied for a patent.

Prototype

Please note: when you have developed your prototype, you may need to conduct further research to improve the design. This could result in changes to the technical specifications. It is not possible to include such changes in a patent application that has already been submitted. During the prototype phase, you should therefore carefully consider when the right moment has arrived for filing a patent application. Should you apply for several patents at each progressive stage of development? Or should you apply for a single patent when the development process has been completed?

Protecting or registering your product

When your prototype has been developed, you can consider applying for a patent for your invention. A patent will allow you to protect your invention and prevent other people benefiting from your success without permission. You can protect your invention by means of the following options (or a combination of these):

- a patent for new technical products or processes;
- a trademark for company logos, company names, product names, etc;
- model rights, design rights (registered design protection) and copyright for the new, external product design;
- copyright, for example for photographs, architecture, text, music and films;
- confidentiality, for example for recipes and formulae, manufacturing techniques or chemical compositions.

Registration does not offer protection, but it can be useful when combined with a confidentiality statement or other form of protection.

Please note: registration does not offer protection. To ensure you have protection, you must take further action, for example, by applying for a patent.

You can also register your idea for a new product. Registration involves recording the fact that you devised a particular idea on a specific date. Although it does not offer protection, it can be useful when combined with a confidentiality statement or other form of protection.

There are various ways of registering your idea. One possibility is to approach the Benelux Office for Intellectual Property via i-DEPOT (BOIP, see page 22). You can also go to a civil-law notary: they will register your idea and will then draw up a deed. Finally, it is also possible to register your idea at some of the offices of the Tax and Customs Administration (Belastingdienst). For details, search for the term 'onderhandse akten' (private documents) in the Dutch section of the Tax and Customs Administration website. The Tax and Customs Administration does not however store specific documentation about your registration.

The advantages and disadvantages of a patent

The main advantage of a patent is that it allows you to prevent your competitors from marketing the same product. You can also earn additional money by selling or licensing your patent. This permits a third party to use the patent under specific conditions.

There are also disadvantages involved in applying for a patent. It costs money and is time-consuming to acquire and maintain a patent. You are also personally responsible for checking whether other people are using your patent without your permission; there is no such thing as a patent police. In addition, your patent will be published after eighteen months, enabling other people (and your competitors) to read the exact details of what you have invented. This publication is actually the quid pro quo for the protection afforded by a patent: it enables your invention to inspire other people to innovate.

All of this means that it is not always easy to decide whether to apply for a patent or not. Below you will find a list of factors that will help you to make the right decision.

Do apply for a patent

- if the benefits outweigh the costs
- if your product has a long life cycle
- if there is a large market with a lot of potential licensees
- if you want to protect your market share
- if an infringement of the patent can be easily demonstrated
- if you can use a patent as part of negotiations
- if your patent enhances your or your company's image
- if it is impossible to keep your invention secret
- if it involves a key technology
- if you require funding or wish to enhance the value of your company

Do not apply for a patent

- if the costs outweigh the benefits
- if your product has a short life cycle
- if there is a small market with low margins
- if there are numerous available alternatives
- if it is not possible to prove that the patent has been infringed
- if time is of the essence
- if competitors have insufficient capital
- if reverse engineering is difficult and it is possible to keep your invention secret
- if there is a limited market and it is more costly and time-consuming to maintain the patent

When should you apply for a patent?

It is up to you to decide whether you apply for a patent and when you do so. This should involve a careful assessment of the risks. For example, you may wish to delay it as long as possible to prevent your competitors finding out exactly what you are developing. But if you suspect that a competitor is already working on a similar development, it is advisable to apply for a patent as soon as possible. If you intend to work in alliance with other parties, it may also be a good idea to apply quickly. This will prevent them from stealing your invention.



Phase 3 Marketing your invention:

deciding whether to apply for a patent

At last the time has come: your original idea has been transformed into a tangible product. You can now launch your product onto the market. You now need to decide whether or not to apply for a patent.

How do you apply for a patent?

You have to apply for a patent at the Netherlands Patent Office: a department of the Netherlands Enterprise. To apply for a patent abroad, you have to contact the European Patent Office (EPO), the World Intellectual Property Organization (WIPO) or the separate national offices in the countries where you would like to apply for a patent. When you apply for a patent at the Netherlands Patent Office: a department of the Netherlands Enterprise, the application must include certain details. For example, a title, a description of your invention and a series of conclusions detailing what will be protected. Full details of this along with the other application requirements can be found on the patent application form. The form is available to download from our website.

To the application form, you have to attach a document describing your invention. This should include the technical details of how it differs from other inventions, since it is for these that you may be able to apply for patent rights. Try to describe these differences in as concrete terms as possible.

Patent attorneys (also known as patent agents) are technical experts with legal training who can help you to draft a patent application.

It is possible to draw up a patent application yourself, but it is a good idea to enlist the assistance of a patent attorney. These are technical experts who also have legal training. On page 22, you will find the website address of the Netherlands Institute of Patent Attorneys (Nederlandse Orde van Octrooigemachtigden). Their website provides information on the services offered by patent attorneys.

You should submit your Dutch patent application to The Netherlands Patent Office: a department of the Netherlands Enterprise Agency. This can be done in person, by post or digitally by filing an online application. To file your application online, you will need a smartcard, a reader and the associated software. More information is available on our website.

How long is a patent valid?

A Dutch patent is valid for a maximum period of twenty years or for a shorter period if you stop paying the maintenance fees. The maintenance fees are payable from the fourth year onwards. The fees increase relatively slowly until the tenth year. This is because it is assumed that you will need to make significant investments in your product during these early years. From the tenth year onwards, the fees start to increase by a larger amount. If you no longer wish to maintain your patent, you can simply stop paying. It is not possible to extend the patent beyond the twenty-year period. An exception applies for medicines and crop protection products: in these cases, it is possible to extend the patent beyond twenty years. If you wish, you can apply for a Supplementary Protection Certificate for these products.

How much does a patent cost?

Applying for a patent costs money. You will therefore need to think carefully about whether a patent is the right solution for your particular situation and about the countries for which you wish to apply for patent. Do the benefits outweigh the costs? You will have to pay:

- a patent attorney to assist you in drawing up your patent application;
- The Netherlands Patent Office: a department of the Netherlands Enterprise Agency for processing the application, for conducting research into the state of the art (also known as prior art) and for the maintenance fees;
- a lawyer, if you decide to sue someone for infringing your patent.

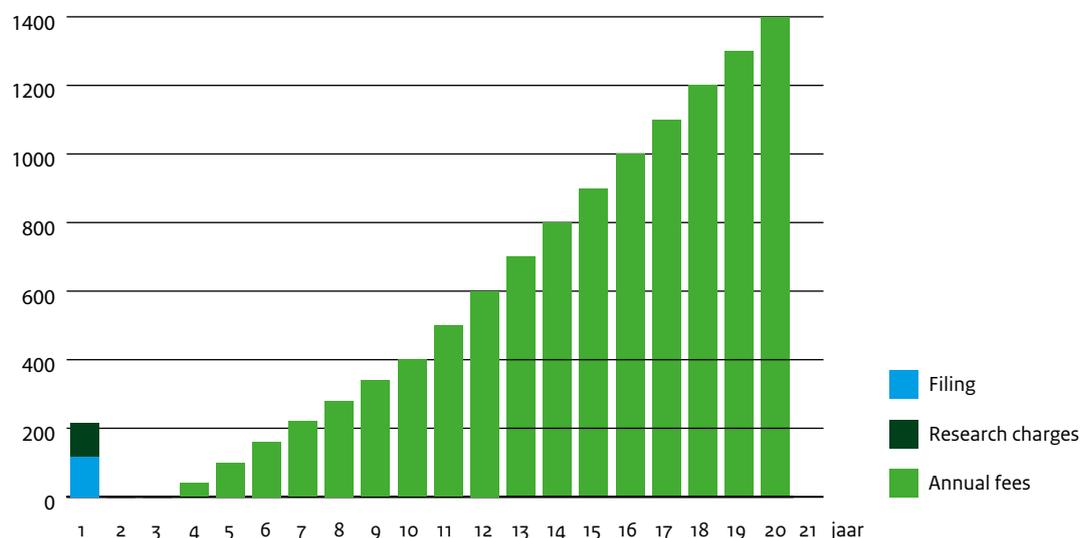
If you believe that there will be financial benefits in having your patent apply outside the Netherlands as well, you will also have to pay the additional costs of:

- a patent attorney to assist you in filing your patent application in other countries;
- one or more translators, since patent applications often have to be filed in the language of the country in which they will apply;
- the patent offices in these countries to process your patent application and to maintain your patent.

Overview of fees

Below is a list of the fees applied that are in line with the Dutch Patent Act of 1995 and the associated Implementation Decree.

Fees for filing and research into the state of the art, effective 5 June 2008	Euro
Fee for filing application	
<i>Online</i>	80
<i>On paper</i>	120
Fee for request to conduct research into the state of the art (VNO)	100
Fee for request to conduct research into the state of the art for international type (VNO/INT)	794



State of the art research requirement

Since 2008, it is compulsory when applying for a patent to also apply for research into the state of the art within thirteen months, otherwise the patent application will lapse. You can adjust your application based on the results of this research. The research will make it easier for you and third parties to estimate the value of the patent awarded. You will also receive what is known as a written opinion. This explains the results of the research.

Applying for a patent abroad

An invention is only protected by a patent in the countries in which a patent has been applied for and granted. You should therefore consider carefully in which countries you wish to protect your invention. To apply for a patent abroad, you can contact the European Patent Office (EPO), the World Intellectual Property Organization (WIPO) or the separate national offices in the countries where you would like to apply for a patent. If you apply for a patent in the Netherlands first, you will have one year in which to file the same application in other countries. The filing date for the original Dutch application will then also apply for the foreign application. You can use this period, known as the priority year, to do research on the countries that may be of commercial interest for your invention.

It can prove advantageous to apply for a patent in other countries. In making your decision, you can consider the countries in which:

- you are already active in the market;
- there are large markets;
- your competitors are active as well;
- your product can be manufactured;
- there are options for taking legal action against those who infringe your patent.

At the EPO you can apply for all countries that have signed up to the European Patent Convention (EPC) in a single application procedure. When the process has been completed, you will have a series of patents for the different countries: one for each country you have selected. You will need to meet a number of conditions per country before the patent can become and remain valid. There is no such thing as a world patent. It is possible to initiate an international application via the WIPO.



Phase 4 Selling your patent:

earning money with your idea

You have a patent on your invention. The secret now is to make the best use of your invention to maximise your financial returns. You may choose to market your product yourself, but it is also possible to sell or licence your patent.

The advantages of developing and manufacturing your invention yourself are:

- its success or failure will remain in your control;
- you will retain control of your invention, its reputation and quality;
- you can use the proof of your success to encourage investors to invest in you.

On the negative side, this will require significant investments for patent applications (in your home country and abroad), setting up manufacturing facilities and marketing. It is also no easy matter selling or licensing an invention that has great potential. You will need to have well-developed business skills and a good business plan, a factor which start-up businesses especially should not underestimate.

If you do not see any opportunity for marketing your invention yourself, it may make more sense to sell your patent. This is a quicker alternative: it enables you to earn money without major investments and you do not have to enforce your patent yourself or take legal action in the event of infringements. The disadvantage of selling your patent is that it is final: after you have sold it, you will no longer have control over your patent. In addition, for a completely new, standalone product it is very difficult to find potential buyers for the patent or to determine a price for the product. On the other hand, it may be equally difficult to develop a market yourself.

Selling your patent on a country-by-country basis

If you do not wish to market your product in specific countries, it may make sense to sell your patent in these countries only. This will mean relinquishing the patent rights for these countries in one go. It will then be up to someone else to decide what happens to the patent in these countries.

If you do not see any opportunity for marketing your invention yourself, it may make more sense to sell your patent.

The benefits of licensing

Finally, it is also possible to licence your patent in each country or in each market segment. With an exclusive licence, you give a single party the exclusive right to utilize your patent in a market or specific market segments. You can issue a licence on your patent for each individual country or market area. This means that it is possible to market the product yourself in some countries, and in other countries, where you are not active, you can issue licences to third parties. Licence brokers and companies that specialise in the sale of inventions can provide advice on this.

The advantages of licences are:

- It is possible to combine your own production with licensing in other countries or market segments.
- You will retain control over your invention (something you would lose if you sell your patent).
- In each country and product segment, it is possible to have open or exclusive licences.
- You have a clear overview of the market (in the case of exclusive licences).
- An open licence enables you to respond most effectively to supply and demand.
- You create additional opportunities for making a profit.

When granting licences, it is important to make very careful arrangements. For example, you must determine and formerly agree in advance who will be responsible for monitoring the patent protection. You will also need to decide who will take legal action if the patent right is infringed. The success of your product will depend on the results of the licensees. It is therefore a good idea to agree a minimum share, a royalty, in the proceeds in advance. This will prevent a licensee taking an exclusive licence and then doing nothing with it. In addition, the reputation of the product that you market yourself will also be affected by the quality of those supplied by a third party (this applies particularly to open licences).

Infringement or problems with a patent caused by a third party

Patents can be the cause of conflict between two or more parties. For example, imagine you have patented your product and are successfully selling it on the market. Suddenly sales drop off and you discover that someone else is copying your design. This means that they are infringing your patent. Unfortunately, there is no such thing as the patent police. It is up to you to take action against someone who infringes your patent. You do however have the option of enlisting the help of a lawyer specialising in international property law.

There is also a possibility that another patentee could decide that your invention bears too much resemblance to the invention on which he or she also has a patent. In addition, a patentee may feel restricted by someone else's patent because it prevents him or her from developing the idea further. In the Netherlands, these kinds of disputes are heard in the court of The Hague.

Finally, you may be of the opinion that somebody else's patent does not meet the requirements set in the Patent Act (novelty, inventive step and industrial applicability). In that case, you can attempt to have the patent annulled by the court in The Hague. To do this, you will need advice from the Netherlands Patent Office: a department of the Netherlands Enterprise. You should request this advice from us and submit it to the court along with your request for annulment.

Patent application guide

Before you apply for a patent, you should carefully consider the following questions.

- Can I protect my invention with a patent?
In order to be eligible for a patent, your invention must meet the following three requirements:
 - the invention must be new: it may not have been published or revealed anywhere else in the world;
 - the invention must be inventive: it must not appear obvious to a professional;
 - the invention must be industrially applicable: it must involve a concrete product or concrete working method.

- Does my idea already exist anywhere else in the world?
The best way of researching whether or not your idea exists elsewhere in the world, is to consult the patent database at esp@cenet. This database, in which more than eighty million patent publications are stored, can be freely accessed. The website address for esp@cenet can be found on page 22. The search example shows you how to search the database.

- Is it possible to enlist assistance in searching in esp@cenet?
For assistance in searching within esp@cenet, you can e-mail a request for search advice via www.rvo.nl/zoekadvies. Do not forget to include your company name, address and telephone number. You will then receive the classification code(s) that apply to your invention and any publications that may be related to it.

- How much does a patent cost?
Applying for a patent costs money. It is important that you earn enough to recover the costs spent on a patent otherwise it may be a better idea to market your product without a patent. For an indication of the costs involved, you can visit our website.

- Is there a market for the product?
Before applying for a patent, it is sensible to conduct research to find out if there is a market for your invention. This will prevent you from investing a lot of time and money in your invention only to find out later that no one wants to buy your product. You will then be unable to recover the costs that you have incurred.

- Can I enlist help in writing my application?
A patent application is a technical and legal document which must include a highly detailed description of your invention. It therefore makes sense to have your application written by a patent attorney. A patent attorney, also known as a patent agent, is a specialist in patent law, with technical and legal training. You can search for a patent attorney using the Register of Patent Attorneys (*Register van Octrooigemachtigden*). The website address can be found on page 22.

How long will it take for the patent to be issued?

The time that it takes for a patent to be issued varies from country to country. In the Netherlands, we generally issue the patent eighteen months after you filed your patent application. It can be issued more quickly, but this also means that the patent will be published at an earlier date. Applying for international patents can often take several years.

Does the option of registration at the Tax and Customs Administration offer sufficient protection for my idea?

No, even if your idea is registered at the Tax and Customs Administration, you will need to take further action to ensure that it is protected, for example by applying for a patent. Registration only involves recording the fact that you devised a particular idea on a specific date. It offers no further protection but can be useful when combined with the confidentiality statement. This kind of registration can be useful for copyright issues.

For how long is a patent valid?

Providing that you continue to pay the annual fee, a patent is valid for a maximum of twenty years. Longer periods are possible for crop protection products and medicines.



***Finally: do you have any questions?
We will be happy to provide you with further
assistance.***

Issuing patents is not the only thing we do. We will also be pleased to offer you assistance in various other ways.

Assistance from a patent advisor

You can make an appointment with one of our patent advisors free of charge. You can discuss the various options for protection with the advisor. He or she can provide support in your research in the patent databases or offer to conduct a patent search for you. An advisor can also provide information on strategies for the different types of protection or combinations of these, the benefits of a patent and the procedure for a patent application. Our advisors work in the various branches of the Chambers of Commerce, spread across the Netherlands, and from the head office in The Hague.

Trends in areas of technology

We are commissioned by government authorities to conduct research with the help of the patent databases. Based on the statistical information about patents, this research charts the trends and developments within sectors of industry, technologies, regions and target groups. You can also view or download the research reports at www.rvo.nl/octrooirapporten.

Guest lectures and teaching materials

Students - the entrepreneurs of the future - and researchers often need information about patents. How does the patent system work? How can patents and patent applications be of use to them? To answer these questions, we offer institutes of higher education a range of different products including teaching modules, guest lectures, workshops and presentations.

Useful websites and e-mail addresses

	What information is provided?	Page
I www.rvo.nl/patents	<ul style="list-style-type: none">• Dutch patent register• Patent application form• Electronic filing of Dutch patent applications• Research reports into technological trends	5 11 11 21
E octrooien@rvo.nl	<ul style="list-style-type: none">• Requesting search advice (help with searching within esp@cenet)• Making an appointment with a patent advisor	18 21
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I www.octrooi.nl	<ul style="list-style-type: none">• Services offered by patent attorneys	11, 18
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Dutch Association of Inventors (Nederlandse Orde van Uitvinders - NOVU)		
I www.novu.nl	<ul style="list-style-type: none">• NOVU is the professional and knowledge organisation for inventors, product developers and researchers in the Netherlands	
TechnoPartner		
I www.technopartner.nl	<ul style="list-style-type: none">• Support in starting up a business based on a technical invention	
Technostartercoach		
I www.technostarterspreekuren.nl	<ul style="list-style-type: none">• A TechnoPartner initiative implemented by NOVU in alliance with the Chamber of Commerce. To find out about the technical feasibility and market potential of an idea	
Higherlevel		
I www.higherlevel.nl	<ul style="list-style-type: none">• Entrepreneurs' forum, financed by the Ministry of Economic Affairs	
NewVenture		
I www.newventure.nl	<ul style="list-style-type: none">• An initiative of McKinsey & Company and the Ministry of Economic Affairs to provide support to innovative entrepreneurs in starting up a company	

This is a publication of:

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© Netherlands Enterprise Agency | January 2014
This publication was commissioned by the ministry of Economic
Affairs.

Publication number: 4OCNL1408

Netherlands Enterprise Agency is a department of the Dutch
Ministry of Economic Affairs that implements government policy
for sustainability, innovation, and international business and
cooperation. It is the contact point for businesses, educational
institutions and government bodies for information and advice,
financing, networking and regulatory matters.

Netherlands Enterprise Agency is part of the ministry of Economic
Affairs.

The Netherlands Patent Office: a department of the Netherlands
Enterprise Agency grants patents in the Netherlands, informs
about the patent system and represents Dutch interests in
European and international organisations.