

## Patents made clear

**F**OR THOSE fortunate or clever enough to devise a unique technical development or enhancement, protecting the intellectual property component is vital. In most cases, this involves applying for and securing a patent. A patent is a monopoly right granted by a state in return for disclosure of an invention that gives you the right to stop others from exploiting your invention in that state or in other states that you register the patent in.

A patent grants a monopoly in the manufacture, sale and use of the invention for a fixed period of time. In Ireland and in most other countries, the period of monopoly is 20 years.

According to the Irish Patents Office, there were 961 patent applications last year, composed of 415 full-term applications (20 years) and 546 for short-term applications (10 years). Short-term applications generally relate to less technical solutions.

"A patent may be granted for an invention if it is new, involves an inventive step and is susceptible of industrial application, so if you come up with a new product or process, or an improvement on an existing product or process, and what you've done is not obvious, then you probably have a patentable invention," explains Richard O'Connor of patent attorneys Cruickshanks.

Not everything is patentable, and patents cannot be obtained generally for ideas, schemes or aesthetic creations. Nor will they be granted for inventions that are contrary to morality or public order. Specifically, plant and animal varieties obtained through standard methods of crossing and selection are also excluded from patentability.

"With regard to the novelty or 'newness' of your invention, the requirement is very strict. If the invention or an invention with the same set of features has been written about, spoken about, sold

or used anywhere in the world, in public, by you or anyone else before the filing date of the patent application, then it will probably not be classified as new," he says.

The second requirement is that your new product involves an inventive step. Inventiveness is also commonly referred to as "a lack of obviousness".

The third requirement for patentability is that the invention be capable of industrial application. This means that it must be possible to make or use the invention in industry or agriculture.

Those considering revealing their ideas on *Dragons' Den* should make sure that their patent application is filed first, as

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the validity of the patent could be called into question at a later date if there's evidence of any sort of public disclosure prior to filing. It's very important that you do not disclose your invention before you file. If you must disclose it, we recommend using a Non-Disclosure Agreement (NDA) in which the person to whom you are disclosing undertakes not to disclose the information to anyone else," O'Connor says.

Most inventors will employ a patent attorney to prepare the patent application, something Gerard Barrett, head of Administration at the Patents Office recommends. "Not all patent applications are successful

and in general the DIY applications are the ones that tend to fail. Common mistakes are not providing enough disclosure or poorly describing the invention. The patent application might be successful but it could be easily circumvented" he says.

Typically, the application involves describing a problem and a solution in detail, and the invention must be described in a way that would allow a person of ordinary skill in the technical field to recreate the invention.

When applying for a patent, you can choose to file one or more national applications, for example, in Ireland and the UK, a regional application, such as at the European Patent Office (EPO), or an international application under the Patent Cooperation Treaty (PCP).

Filing a patent for Ireland and the UK costs considerably less than one covering the major world economies. According to Richard O'Connor, those considering an Ireland and UK patent should budget for something in the region of €7,000, while a patent covering the major economies of the world is likely to cost in the region of €50,000. Additional annual costs will be incurred to maintain the patent during its life.

How widely you decide to patent is a commercial decision and depends on the circumstances. "Ultimately it's a commercial tool," says O'Connor, "and you need to do a cost benefit analysis of how far you feel it is worthwhile to go to protect your intellectual property."

Until now, generous tax incentives were available on patent royalties. O'Connor says that the decision by the Government announced in the four-year budget plan to end the tax exemption on patent royalties will be a major disappointment to SMEs. He says that this will act as a disincentive to manufacture in Ireland, and that some of his clients will now consider moving production overseas as a result.