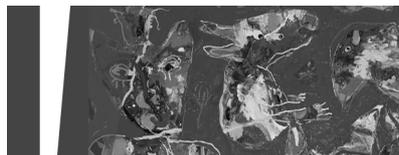


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Artist Bjørn Bjørnholt

The Structure of a Patent

Which information can be found in patent documents

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Requirements to a patentable invention

- A **technical solution** to a **technical problem** (technical character)
- **New**, an objective and global criterion
- **Inventive step**, i.e. having regard to the state of the art it must not be obvious to the person skilled in the art
- **Industrially applicable** US: Useful

In Europe methods for treatment by surgery or therapy and diagnostic methods are excluded from patentability

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An invention is NOT patentable if it **lacks technical character**, in particular if it is

- A discovery
- A scientific theory or a mathematical method
- An aesthetic creation, literary, dramatic or artistic work
- A scheme or method for performing a mental act, playing a game or doing business
- A presentation of information
- A computer program

But only to the extent the invention relates to such subject-matter or activities **as such**

3

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Patents and patent applications are

- **Technical documents** disclosing a technical invention
- **Legal documents** defining **intellectual property rights** associated with the invention. The owner may enforce his rights against unlawful acts by others
- **Assets** representing a value that can be traded

Therefore, great care should be taken when drafting and prosecuting patent applications to ensure a broad and strong protection of the invention

4

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Information in a patent or patent application

- Front page with useful bibliographic details
- See [Anatomy of a US patent.pdf](#)

5

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Information in a patent or patent application

- **Bibliographic data** including the **title** of the invention
- Relevant **background art** should be identified. A problem in the prior art may be identified
- **Disclosure of the invention** in such terms that the technical problem and its solution can be understood. The disclosure includes a written **description** and **drawings**, if relevant. The disclosure must be "enabling" so that a person skilled in the art can reproduce the invention
- **Claims** defining what is (sought to be) protected
- **Abstract** giving a brief overview of the invention

6

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Claims

- The claims define, in technical terms,
 - the extent of the protection conferred by a patent, or
 - the protection sought in a patent application
- A patent gives its owner a right to preclude others from making, using, selling or offering for sale the subject matter defined by the claims, but only in countries where the patent is in force
- The claims have been carefully examined by one or more examiners in the patent office before grant of the patent

7

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Claims

- **Independent** claims, which stand on their own. Independent claims define the **broadest protection** and are also called **main claims**.
- **Dependent** claims, which depend on one or more claims and generally express particular and more specific embodiments of the invention

8

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A patent does NOT contain any of the following information

- The life of the patent after grant
- Is the patent in force, i.e. have renewal/maintenance fees been paid
- Who owns the patent, i.e. has the patent been re-assigned/transferred
- Are other patents dominating, i.e. is working dependent on other patents
- Will licenses be available
- Have licenses been given
- Is the invention being worked
- Has the patent been litigated
- Are there patent family members in other countries

9

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A published patent application does NOT contain any of the following information

- Status of the application:
 - Has the application been examined
 - Is the application pending
 - Has the application been withdrawn
 - Are there patent family members in other countries
 - Has a patent been granted
- Status information can be obtained through (online) file inspection

10

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How can a granted patent influence my activities?

- Is the invention and the technology of the patent relevant to me?
- Will the patent restrict my freedom to operate?
 - If so, is a license desirable?
 - Is a license available?
 - Can I design around the patent?
 - Can I attack the patent and have it restricted or revoked?
- An inspiration and a starting point for further development
 - Will my further development be covered by the patent?
 - If so, see above
 - Will the patent owner be interested in my further development?

11

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Is it a **patent** or a patent **application**

Patents

- Have (usually) been examined and represent a right that can be enforced
- Have limited geographical coverage
- Patents in a patent family may have different claims in different countries
- Relevant prior art may exist that has not been cited in the prosecution of the application
- In some countries opposition may be filed within a specified period

12

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Is it a **patent** or a patent **application**

Pending patent **applications**

- Represent potential rights applied for
- Claims may be amended/limited during prosecution
- Can (usually) not be enforced until after grant
- Should be watched if a conflict of interest can be foreseen, and relevant prior art should be identified for possible use in an opposition

13

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Useful links

- <http://www.dkpto.dk> Danish Patent and Trademark Office, DKPTO
- <http://www.epo.org> The European Patent Office, EPO
- <https://register.epoline.org/espacenet/regviewer> EPO file inspection
- <http://patft.uspto.gov> USPTO search
- <http://www.google.com/patents> Google patents
- <http://ep.espacenet.com> Esp@cenet
- <http://www.jpo.go.jp> Japan Patent Office
- http://www.sipo.gov.cn/sipo_English Chinese Patent Office
- <http://www.wipo.int/portal/index.html.en> WIPO

14